

#73

BRUNSWICK INDUSTRIAL PARK  
BRUNSWICK, MAINE

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR PHASE III- Lots #15 - #19A

The Inhabitants of the Town of Brunswick, owners of a certain parcel of land described in deeds from Derrill O. Lamb recorded in the Cumberland County Registry of Deeds in Book 4550, Page 212; Arthur J. Coulombe and Annette M. B. Coulombe recorded in said Registry Book 7228, Page 347; Wesley M. Gott and Mildred F. Gott recorded in said Registry in Book 4550, Page 220; are prepared to sell and convey ownership of certain lots and parcels of land from the aforementioned premises.

These parcels are shown and identified as Lots #15-#19A on a Plan of land entitled "PLAN OF SUBDIVISION OF PROPERTY, BRUNSWICK INDUSTRIAL PARK, PHASE III, GREENWOOD ROAD & INDUSTRIAL PARKWAY, BRUNSWICK, MAINE" dated 6/28/89, hereinafter referred to as "Plan", "Development" or "Park", which Plan is recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 58. The word Plan shall also refer to any subsequent revisions of said Plan which may be recorded from time to time.

In order to preserve the industrial qualities of the Development without injuring the natural beauty and rural qualities of adjacent or nearby land, and in order to provide each owner of a parcel of land purchased pursuant to the Plan with assurances that the lots and parcels of land surrounding this parcel will be subject to reasonable safeguards against acts and uses which could harm the nature and value of this property, the Inhabitants of the Town of Brunswick (hereinafter sometimes referred to as "Developer") impose upon the lots and parcels of land described on the Plan certain mutual and beneficial easements, covenants and restrictions.

NOW, THEREFORE, the Developer hereby declares that each and every lot or parcel of land shown on the Plan, shall be conveyed subject to, and with benefit of, easements, covenants and restrictions set forth in this Declaration, and all of the provisions of this Declaration shall be deemed to be incorporated and included therein as if set forth in full in the deed. All of the provisions of this Declaration shall be deemed to be reciprocal covenants running with the land.

Definitions: As used in the Declaration:

(a) The word "Developer" shall mean and refer to the Inhabitants of the Town of Brunswick and their agents, nominees, successors and assigns.

(b) When referring to parties against whom this Declaration may be enforced, the words "owner" or "lot owner" shall mean and refer to any person having record title to a lot or parcel of land shown on the Plan as Lots #15-#19A and/or any person who has a legal or equitable interest (possessory or otherwise), or claim therein (including but not limited to interests created by lease, will, contract, adverse possession or prescription). In all other instances the words "owner" or "lot owner" shall refer to title holders and owners of record.

(c) The word "parcel" shall mean and refer to any premises, lot or parcel of land shown on the plan, or any part or combination thereof.

(d) The word "Park" shall mean and refer to the development as shown on the Plan in its developed, partially developed or undeveloped state.

(e) Whenever and wherever the context of this Declaration so requires, the singular shall include the plural and gender shall be modified to correspond with the appropriate gender.

(f) The word "person" shall, where the context hereof may require, mean and refer to any natural born person and any legal entity, including but not limited to, corporations, partnerships, trusts and associations.

1. Covenants and Enforceability.

A. The following covenants, restrictions and easements shall run with the land designated on the Plan, the land conveyed pursuant to the Plan and the land in the Park retained by the Developer. Any subsequent conveyances, leases, mortgages or other dispositions of such land or any part thereof shall be subject to these covenants, restrictions and easements.

B. The covenants, restrictions and easements set forth in the Declaration shall not terminate or otherwise expire until January 1, 2021.

C. The covenants, restrictions and easements shall be jointly and severally enforceable by the Developer and its assigns and by its grantees, their successors and assigns; provided, however, only the Developer shall have the right to exercise the discretionary powers hereinafter reserved to it. The violation or attempted violation of any covenant, restriction or easement in the Declaration is hereby declared a nuisance which may be remedied by any appropriate legal proceeding. If any landowner shall attempt to violate, violate, or permit any violation of any of the covenants, restrictions or easements described in this Declaration, the Developer or any owner of a parcel may commence proceedings at law or equity, either to recover damages or other awards for attempts or violations, or to enjoin the furtherance or continuation of such attempts or violations, or both.

By accepting delivery of a deed to a parcel of land shown on the Plan each owner of record covenants that if a judgment is rendered against such owner as a result of an action or actions brought on this Declaration, to pay all reasonable costs, including reasonable attorney's fees, incurred in the prosecution of said claim. By acceptance of a deed to a parcel subject to the provisions of this Declaration, each owner covenants and agrees to abide by all such provisions.

D. In the event of a violation or breach of any of the covenants, restrictions, easements or agreements set forth in this Declaration, and if such breach or violation has not been remedied or corrected within thirty (30) days after delivery of notice of such violation or breach by the Developer to the occupant of the parcel on which the

violation or breach has occurred, [or in the alternative, within thirty (30) days after mailing such notice to the record owner of such parcel at his last known address] the Developer shall have, in addition to other remedies and rights it enjoys, the following remedy and right: The Developer may enter upon the parcel as to which such violation or breach has occurred or exists and summarily abate and remove any erection or thing or correct any condition which constitutes such violation or breach. Actions taken by the Developer pursuant to this paragraph including reasonable attorney's fees shall be at the expense of the owner of such parcel, which expense shall be an encumbrance and lien on such parcel, notice of which shall be recorded in the Cumberland County Registry of Deeds.

## 2. Land Use.

A. Prior to any development of a lot, the owner or prospective owner shall submit to the Developer, for its review and approval, a plan of such lot's development. The plan shall include, and not be limited to, the type and size of industry, location of all structures, types and volumes of wastes to be generated and disposed of, the location and nature of disposal, the types and volume of traffic anticipated, and individual lot landscaping and/or visual screening plans.

B. Each parcel shall be used for only those uses permitted in an Industrial Park Overlay Zone and if none, a Moderate Density Industrial Zone, defined by the Town of Brunswick Zoning Ordinance then in effect, and no parcel set forth on the Plan may be used for any purpose other than those purposes permitted in said Zone. Any uses for which special exceptions are required in said Zoning Ordinance are prohibited unless such special exception is properly granted and such use is approved in writing by the Developer. Any uses which are generally considered to be noxious or offensive, including but not limited to, tanneries, evisceration plants and junkyards are prohibited.

C. Fish, shellfish and food processing or treatment and preparation of any animal or vegetable materials for human or animal use or consumption (hereafter referred to as food processing) present unique problems of liquid and solid waste, storage, removal, disposal and treatment, and potentially unhealthful and noxious nuisances and odors. [Lot number 15 may not be used for any industry engaged in food processing; and, food processing is a prohibited use on the remaining interior lots except that the Developer may, at its sole discretion, on a time by time and lot by lot basis, permit such use on any one of the interior lots on such specific conditions and subject to such additional restrictions as it shall deem proper.] *Review with Council*

D. The Developer reserves the right to further limit or restrict the use of any particular parcel; and, such further limitations or restrictions shall be contained in the deed of the Developer conveying said parcel and shall apply to only the parcel(s) to which such restrictions are specifically directed in said deed.

E. No use will be made of any parcel and no materials or products may be manufactured, processed or stored thereon which cause or constitute, or in the opinion of the Developer may cause or constitute, an undue fire hazard, a nuisance, the emission of noxious

odors, gases or smoke or cause noises or vibrations or other conditions which may have a detrimental effect on the surrounding environment or other lot owners in the Park.

F. The drainage way on the southern perimeter of Lots 18 & 19 and the northern perimeter of Lots 16 & 17 as depicted on the Plan shall be maintained except to the extent that any alterations of such drainageways are shown on plans approved by MDEP and the Town.

### 3. Setbacks, Plans and Specifications.

A. (1) No building, any part thereof, or projection therefrom, shall be erected on, within or extend over a strip of land fifty (50) feet in width from any road, or "future road" shown on the Plan, and/or within twenty (20) feet of any boundary line of a parcel on which a building is erected unless the Developer gives written consent, in recordable form, to a lot owner in an instance where a setback need not be met due to abutting rail spurs and/or common loading facilities; provided, however, in the event title to two or more contiguous parcels are owned by the same person the twenty (20) foot setback restrictions shall not apply to interior boundary lines between the contiguous parcels. Lot number 15 on said Plan shall have and maintain a fifty (50) foot wide buffer zone along any bound which is common with residential property on Greenwood Road, which buffer zone shall not be utilized for building or parking as long as the abutting property is used for residential purposes. At the expiration of said residential uses, applicable setback restrictions shall continue in force.

(2) Any of the aforementioned setback areas, to include drainage way setbacks described in Section 2 F., may be landscaped for beautification and erosion prevention, provided prior written approval has been granted by the Developer.

B. No building, driveway, fence, wall, sign, loading facility, outside storage facility, parking area, paved areas, landscaping, facility for industrial waste or sewage disposal, nor any other improvement shall be commenced, erected or constructed, nor shall any addition thereto or change or alteration therein be made (except to the interior of a building), nor shall any change in the use of any premises be made, until the plans and specifications therefor, showing the nature, kind, shape, heights, materials, color scheme, and lighting, of the exterior of the structure and location on the lot of the proposed improvements, grading, landscaping or alterations and the proposed use or change in the use of the premises, shall have been submitted to and approved in writing by the Developer and a copy of such plans and specifications, as finally approved, lodged permanently with the Developer. The Developer shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reasons which the Developer, in its sole discretion, may deem in the best interest of the Park and the owners or lessees or prospective owners or lessees of other properties therein.

C. Parking is prohibited on all roads and "future roads" as shown on said Plan. Each lot owner shall provide, subject to the setback and buffer restrictions, necessary and adequate parking facilities and private driveways, subject to the Developer's approval.

D. The construction, alteration and use of any and all improvements within the Park shall be in accordance with the requirements of all applicable state and local building, zoning, health and other statutes, codes, ordinances and regulations.

E. No lot or parcel may be subdivided or resubdivided unless the smallest lot produced thereby has a minimum lot size of two (2) acres or more.

F. Nothing in Section 3 E above shall prohibit the further division of a lot into a planned unit development or condominium development provided such planned unit development or condominium development has first been approved in writing by the Developer, the Brunswick Planning Board and any other State or municipal agency which has review authority over such development. Further approval of such planned unit development or condominium development by the Department of Environmental Protection shall not be required provided such development of individual lots is permitted under DEP Permit No. 39-6773-05030 as amended.

#### 4. Construction and Maintenance.

A. All exterior construction on any building or structure shall be completed within two (2) years from the date of construction (including excavation) begins unless the Developer extends such period in writing.

B. During construction it shall be the responsibility of each lot owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, sheds, and the like are kept in a neat and orderly manner.

C. Each lot owner shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from his premises.

D. The Developer will maintain all undeveloped land owned by it within the Park in a manner compatible with the provisions of this paragraph 4.

#### 5. Repurchase Options.

A. If a purchaser, or his successors and assigns, of a parcel has not begun, in good faith, the construction of an acceptable building within two (2) years from the date of execution of a purchase and sale agreement for the parcel with the Developer (and if none, two (2) years from the date of execution of the deed from the Developer to purchaser), or within such longer period as the Developer, in its sole and absolute discretion, may agree to in writing, or construction of a building or structure has not been completed pursuant to paragraph 4.A. of this Declaration, the Developer shall have the option, at its discretion, to enter onto the premises, take possession of the parcel, enforce the issuance of a deed to the Developer and refund the original purchase price (that price which was originally paid to Developer) without interest to the then owner. The owner agrees to execute and

deliver all documents as the Developer may deem necessary or advisable to evidence the conveyance of the parcel to the Developer and, in this connection, the owner irrevocably appoints the Developer its true and lawful attorney-in-fact to execute, acknowledge and deliver any and all instruments or documents which the owner shall fail or refuse to execute, acknowledge or deliver.

B. Developer shall have a right of first refusal in the event of any proposed transfer or sale of a parcel as follows:

In the event any owner of record of a parcel of land within the Park desires to sell all or part of that portion of a parcel which is unimproved, separate and apart from the improved portion of the parcel, then the Developer shall have the prior right and option to purchase the unimproved portion of the parcel at the same price and terms paid by the original owner of record to Developer for said parcel when originally acquired; said repurchase price to be based on prorated square footage.

C. Prior to any proposed sale of all or part of a parcel of land within the Park which parcel has come under the terms of paragraph B above, the owner of record of the parcel shall notify the Developer of its intention to sell, assign or transfer the parcel by a signed written notice to the Developer. The notice shall accurately describe the premises to be sold and Developer shall have forty-five (45) days from the date of receipt of said notice to exercise its option to purchase. Developer shall exercise its option to purchase by serving a written notice on the record owner within said forty-five (45) day period; and, in the absence of written notice of Developer's intent to exercise its option, the record owner shall, if division of the lots has been approved, be free to sell to any person at any price. If the Developer seasonably exercises its option to purchase, Developer shall have forty-five (45) days from the date of its notice of exercise within which to tender the purchase price established pursuant to paragraphs A and B above. If the Developer does not exercise its option to purchase and the subject parcel is acquired by any purchaser other than Developer, such new owners shall comply with these covenants and restrictions and the rules and regulations established pursuant to paragraph 9.A. regardless of prior compliance by the prior owner of the parcel.

#### 6. Waiver.

Any delay or failure to enforce any provision of these covenants, restrictions and easements in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply to the same or another situation at the same location or the same or similar situation at any other location in the Park, or of any other provision of these covenants, restrictions and easements. The failure to enforce any provision of this Declaration on any occasion shall in no event be deemed a waiver of the right to do so thereafter as to the original breach or violation or any subsequent breach or violation. The invalidation of any provision of this Declaration by a court of competent jurisdiction shall not affect the validity of any other provision of this Declaration and all such other provisions hereof shall remain in full force and effect.

7. Nominees, Agents and Successors of Developer.

The Developer may from time to time assign and/or delegate any or all of its rights, powers, discretion and duties hereunder to such agent or nominee as it may appoint or nominate. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by deed or this Declaration to any one or more corporations, associations or persons that will accept the same. Any such assignment shall be in a recorded writing and the assignee shall join thereafter 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 Developer and the Developer shall thereupon be released therefrom.

8. General Standards.

A. No more than fifty percent (50%) of any parcel shall be covered by buildings.

B. All parking areas and driveways are to be paved.

C. The Developer may, in its sole and absolute discretion and upon such conditions as it may require, grant approval for the outside storage of material, supplies or products. Any approval for storage shall require that the storage be screened from view of abutting property owners and from the street.

D. All setback areas with the exception of driveways, sidewalks and other walkways shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground covering or material as approved by the Developer.

E. The Developer may, from time to time, enter onto a parcel of lot to inspect the same for compliance with this Declaration and Operating Rules and Regulations.

F. Occupants of the Park shall not cause or make any excessive noise, odors, harmful sewage, vibration or nuisance that would conflict with the purposes or restrictions of the Park.

G. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

H. All buildings and grounds shall be maintained in good condition and repair.

9. Administrative and Operating Regulations.

A. The Developer may, from time to time, adopt and amend such administrative rules and regulations for the sale and development of parcels within the Park, the review of proposals, plans and uses, and the carrying out of its responsibilities and duties as set forth in this Declaration, as it shall deem fit and necessary. The Developer may require that an owner of a lot provide evidence of financial

responsibility and/or post a performance bond prior to lot development to guarantee the owner's compliance with these covenants and any additional standards or restrictions placed on the owner or lot.

B. The Developer may, from time to time, adopt and amend such operating rules, regulations and additional General Standards governing the use and operation of the Park.

10. Notice.

All notices required hereby shall be in writing and served on the intended recipient by Certified Mail.

11. Separability.

If any provisions of these covenants are declared to be invalid that declaration does not affect the remainder of the covenants.

12. Civil Penalties.

A. Any person, including, but not limited to the lot owner, his agent, contractor, subcontractor or any other person who violates any provision of this Declaration of Covenants and Restrictions shall in addition to all other liability, be liable to the Developer for the civil penalties set forth in this section.

B. 1. The minimum penalty for each violation shall be \$100.00 and the maximum penalty shall be \$500.00. Each day that a violation continues shall be treated as a separate violation.

2. In determining the amount of the penalty, the following factors shall be considered:

- a. whether there have been any prior violations by the same party,
- b. the extent of any harm to others,
- c. whether the violation was willful.

C. All proceedings for civil penalties shall be brought by the Developer and all penalties shall be paid to the Developer.

IN WITNESS WHEREOF, the said Developer has caused this instrument to be sealed with its corporate seal and signed in its corporate name by

thereunto duly authorized this 5th day of April, 1993, as a majority of its Municipal Officers.

SIGNED, SEALED AND DELIVERED  
in the presence of:

For all

*Donald H. Gerish*

INHABITANTS OF THE TOWN OF BRUNSWICK

*Daniel A. Calderwood*

Daniel A. Calderwood

*R. Pinkham*

Reginald G. Pinkham

*Eleanor R. Swanson*

Eleanor R. Swanson

*Ruth E. Fraser*

Ruth E. Fraser

*Peter C. Gross*

Peter C. Gross

*Charles R. Priest*

Charles R. Priest

Marybeth K. Burbank

*Steven L. Weems*

Steven L. Weems

*Stephen H. McCausland*

Stephen H. McCausland

STATE OF MAINE  
Cumberland, ss.

April 5, 1993

Then personally appeared the above-named DANIEL A. CALDERWOOD and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said body corporate.

Before me,

*Gail S. Hodson*

Justice of Peace, Notary Public

GAIL S. HODSDON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 2, 1993

THIRD AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BRUNSWICK INDUSTRIAL PARK, BRUNSWICK, MAINE

The Town of Brunswick, a municipal corporation situated in Brunswick, Cumberland County and State of Maine, and;

<u>Map 17, Lot Number</u>	<u>Owner's Name</u>	<u>Book</u>	<u>Page</u>
Lot 41	Rohan Corporation	10976	60
Lot 42	Envisionet Computer Services	14424	12
Lot 43	MBNA Properties, Inc.	11947	91
Lot 44	Susan F. Domizi & David F. Domizi, III	7932	15
Lot 45	Aerotech Industries, Inc.	8622	222
Lot 46	Harry W. & Rebecca O. Davis	13834	172
Lot 47	Dead River Co.	8880	39
Lot 48	A B S Maine General Partnership	8861	106
Lot 50(1)	L. L. Bean, Inc.	10166	236
Lot 52	Healthsouth Rehabilitation Center of Granite Hill	10480	177
Lot 53	Snow Flake Canning Company	8293	94
Lot 54	John B. Bouchard	8632	108

owners of certain lots or parcels of land described in a Declaration of Covenants and Restrictions dated February 12, 1981 and recorded in the Cumberland County Registry of Deeds at Book 4739, Page 302, as amended by Amendment dated May 30, 1984 and recorded in the Cumberland County Registry of Deeds at Book 6561, Page 179, and as amended by Second Amendment dated October 3, 1988 and recorded in the Cumberland County Registry of Deeds at Book 8526, Pages 23 - 31, hereby amend the Declaration of Covenants and Restrictions as follows:

1. Subsection 3(C) is amended to read as follows:

Parking is prohibited on all roads as shown on said Plan. Each lot owner shall provide, subject to the setback and buffer restrictions, necessary and adequate parking facilities and private driveways, subject to the Developer's approval. Parking on "future roads" as shown on said Plan shall in no way affect the right of the Developer to construct roads in the areas shown as "future roads" at some subsequent time.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 7<sup>th</sup> day of September, 1999.

WITNESS

For all  
[Signature]

TOWN OF BRUNSWICK

By: [Signature] Stephen H. McCausland, Chair  
By: [Signature] Faith K. Moll, Vice Chair  
By: [Signature] Timothy P. Dotts, Councilor  
By: [Signature] Michael B. Feldman, Councilor  
By: [Signature] Robert A. Galloupe, Councilor  
By: [Signature] David C. Gleason, Councilor  
By: [Signature] Forrest Lowe, Councilor  
By: \_\_\_\_\_ Eleanor R. Swanson, Councilor  
By: [Signature] Clement S. Wilson, Councilor

WITNESS

[Signature]

ROHAN CORPORATION

By: [Signature] Lot Owner

WITNESS

[Signature]

ENVISIONET COMPUTER SERVICES

By: [Signature]

WITNESS

Paula Dyer

WITNESS

Suzanne H. Birn

WITNESS

Patricia A. Howard

Lot Owner  
MBNA PROPERTIES, INC.

By: [Signature]  
Lot Owner Vice President

SUSAN F. DOMIZI &  
DAVID F. DOMIZI, III

By: [Signature]  
By: [Signature]  
Lot Owners

AEROTECH INDUSTRIES, INC.

By: [Signature]  
Lot Owner

HARRY W. & REBECCA O. DAVIS

By: [Signature]  
By: [Signature]  
Lot Owners

DEAD RIVER CO.

By: [Signature] District Mgr.  
Lot Owner

A B S MAINE GENERAL PARTNERSHIP

By: [Signature]  
Lot Owner

L. L. BEAN, INC.

By: [Signature]  
Lot Owner

HEALTHSOUTH REHABILITATION  
CENTER OF GRANITE HILL

By: [Signature]

BK 15358 PG 264

Lot Owner

SNOW FLAKE CANNING COMPANY

WITNESS

Patricia A. Howard

By: Robert Morrill  
Lot Owner Chairman

WITNESS

Patricia A. Howard

JOHN B. BOUCHARD

By: John B. Bouchard  
Lot Owner

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

11/8/, 1999

PERSONALLY APPEARED, the above-named Patricia A. Howard in his capacity as Administrative Assistant of the Town of Brunswick, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Brunswick.

Melissa L. Smith, Jr.  
Notary Public/ Attorney at Law

Melissa L. Smith  
Notary Public, Maine  
My Commission Expires August 24, 2004

22:20:00 11/8/1999 10:00:00 10:00:00 10:00:00 10:00:00 10:00:00

SEAL

RECEIVED  
RECORDED REGISTRY OF DEEDS  
2000 MAR -8 PM 3: 26  
CUMBERLAND COUNTY  
John B. O'Brien

4

THIRD AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BRUNSWICK INDUSTRIAL PARK, BRUNSWICK, MAINE

The Town of Brunswick, a municipal corporation situated in Brunswick, Cumberland County and State of Maine, and;

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1. Subsection 3(C) is amended to read as follows:

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 7<sup>th</sup> day of September, 1999.

WITNESS

\_\_\_\_\_  
For all  
\_\_\_\_\_  
*Doreen H. Henrich*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOWN OF BRUNSWICK

By: *Stephen H. McCausland*  
Stephen H. McCausland, Chair  
By: *Faith K. Moll*  
Faith K. Moll, Vice Chair  
By: *Timothy P. Dotts*  
Timothy P. Dotts, Councilor  
By: *Michael B. Feldman*  
Michael B. Feldman, Councilor  
By: *Robert A. Galloupe*  
Robert A. Galloupe, Councilor  
By: *David C. Gleason*  
David C. Gleason, Councilor  
By: *Forrest Lowe*  
Forrest Lowe, Councilor  
By: \_\_\_\_\_  
Eleanor R. Swanson, Councilor  
By: *Clement S. Wilson*  
Clement S. Wilson, Councilor

WITNESS

*Patricia A. Howard*

ROHAN CORPORATION

By: *Raj Malluhi*  
Lot Owner

WITNESS

*Patricia A. Howard*

ENVISIONET COMPUTER SERVICES

By: *Patricia A. Howard*

WITNESS

Paula Dyer

Lot Owner  
MBNA PROPERTIES, INC.

By: [Signature]  
Lot Owner Vice President

WITNESS

Suzanne H. Birn

SUSANT F. DOMIZI &  
DAVID F. DOMIZI, III

By: [Signature]  
By: [Signature]  
Lot Owners

WITNESS

Patricia A. Howard

AEROTECH INDUSTRIES, INC.

By: [Signature]  
Lot Owner

WITNESS

Patricia A. Howard

HARRY W. & REBECCA O. DAVIS

By: [Signature]  
By: [Signature]  
Lot Owners

WITNESS

Patricia A. Howard

DEAD RIVER CO.

By: [Signature] District Mgr.  
Lot Owner

WITNESS

Patricia A. Howard

A B S MAINE GENERAL PARTNERSHIP

By: [Signature]  
Lot Owner

WITNESS

Patricia A. Howard

L. L. BEAN, INC.

By: [Signature]  
Lot Owner

WITNESS

Patricia A. Howard

HEALTHSOUTH REHABILITATION  
CENTER OF GRANITE HILL

By: [Signature]

BK 15164 PG004

Lot Owner

SNOW FLAKE CANNING COMPANY

By: Robert Monnell  
Lot Owner Chairman

WITNESS

Patricia A. Howard

JOHN B. BOUCHARD

By: John B. Bouchard  
Lot Owner

WITNESS

Patricia A. Howard

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

11/8/, 1999

PERSONALLY APPEARED, the above-named Patricia A. Howard <sup>her</sup> in his capacity as Administrative Assistant of the Town of Brunswick, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Brunswick.

Melissa L. Smith, D.  
Notary Public/Attorney at Law

Melissa L. Smith  
Notary Public, Maine  
My Commission Expires August 24, 2003

SEAL

carpenter/ghh/brunswick/3rdamendtodocofcovip9799 5036.997

RECEIVED  
RECORDED REGISTRY OF DEEDS

1999 NOV 12 AM 10: 19

CUMBERLAND COUNTY

John B. Bouchard

055368

SECOND AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BRUNSWICK INDUSTRIAL PARK, BRUNSWICK, MAINE

The Town of Brunswick, a municipal corporation situated in  
Brunswick, Cumberland County and State of Maine;

<u>Lot Number</u>	<u>Owner's Name</u>	<u>Book</u>	<u>Page</u>
Lot 1	J. Lawrence Lynch & Anne M. Collins	8060	328
Lot 2	William F. Slattery	7762	103
Lot 3	William F. Slattery	7762	103
Lot 4	David F. Domizi III & Susan F. Domizi	7932	15
Lot 5	L. L. Bean, Inc.	8207	42
Lot 6	Town of Brunswick		
Lot 7	Norman A. Davis & Orville T. Ranger	6618	286
Lot 8	Charles A. Vars & Rollinda D. Vars	8060	27-30
Lot 9	M. F. Godfrey Partners		
Lot 10	M. F. Godfrey Partners		
Lot 11	M. F. Godfrey Partners		
Lot 12	Atlantic Distributors Realty Associates	8276	211
Lot 13	Snow Flake Canning Company	8293	94
Lot 14	Austin E. Troworgy & Mary Alice H. Troworgy	8294	224

owners of certain lots or parcels of land described in a  
Declaration of Covenants and Restrictions dated February 12, 1981  
and recorded in the Cumberland County Registry of Deeds at Book  
4739, Page 302, as amended by Amendment dated May 30, 1984 and  
recorded in the Cumberland County Registry of Deeds at Book 6561,  
Page 179, hereby amend the Declaration of Covenants and  
Restrictions as follows:

1. Subsection 2 (A) is amended to read as follows:

Prior to any development of a lot, the owner or prospective  
owner shall submit to the Developer, for its review and approval,  
a plan of such lot's development. The plan shall include, and  
not be limited to, the type and size of industry, location of all  
structures, types and volumes of wastes to be generated and  
disposed of, the location and nature of disposal, the types and  
volume of traffic anticipated, and individual lot landscaping  
and/or visual screening plans.

2. Subsection 2 (F) is amended to read as follows:

The drainage way on the northern portion of Lot 11 as  
indicated on the Plan shall be maintained except to the extent  
that any alterations of such drainage way are shown on plans

approved by the Maine Department of Environmental Protection and the Brunswick Planning Board.

3. Subsection 3 (B) is amended to read as follows:

B. No building, driveway, fence, wall, sign, loading facility, outside storage facility, parking area, paved areas, landscaping, facility for industrial waste or sewage disposal, nor any other improvement shall be commenced, erected or constructed, nor shall any addition thereto or change or alteration therein be made (except to the interior of a building), nor shall any change in the use of any premises be made, until the plans and specifications therefor, showing the nature, kind, shape, heights, materials, color scheme, and lighting, of the exterior of the structure and location on the lot of the proposed improvements, grading, landscaping or alterations and the proposed use or change in the use of the premises, shall have been submitted to and approved in writing by the Developer and a copy of such plans and specifications as finally approved lodged permanently with the Developer. The Developer shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which the Developer, in its sole discretion, may deem in the best interest of the Park and the owners or lessees or prospective owners or lessees of other properties therein.

4. A new subsection 3 (F) is added to read as follows:

Nothing in Section 3 E above shall prohibit the further division of a lot into a planned unit development or condominium development provided such planned unit development or condominium development has first been approved in writing by the Developer, the Brunswick Planning Board and any other State or municipal agency which has review authority over such development. Further approval of such planned unit development or condominium development by the Department of Environmental Protection shall not be required provided such development of individual lots is permitted under DEP Permit No. 39-6773-05030 as amended.

5. Subsection 5 (A) is amended to read as follows:

If a purchaser, or his successors and assigns, of a parcel has not begun, in good faith, the construction of an acceptable building within two (2) years from the date of execution of a purchase and sale agreement for the parcel with the Developer [and if none two (2) years from the date of execution of the deed from the Developer to purchaser], or within such longer period as the Developer, in its sole and absolute discretion, may agree to in writing, or construction of a building or structure has not been completed pursuant to paragraph 4.A. of this Declaration, the Developer shall have the option, at its discretion, to enter onto the premises, take possession of the parcel, enforce the issuance of a deed to the Developer and refund the original purchase price (that price which was originally paid to

Developer) without interest to the then owner. The owner agrees to execute and deliver all documents as the Developer may deem necessary or advisable to evidence the conveyance of the parcel to the Developer and, in this connection, the owner irrevocably appoints the Developer its true and lawful attorney-in-fact to execute, acknowledge and deliver any and all instruments or documents which the owner shall fail or refuse to execute, acknowledge or deliver.

6. Subsection 5 (C) is amended to read as follows:

C. Prior to any proposed sale of all or part of a parcel of land within the Park which parcel has come under the terms of paragraph B above, the owner of record of the parcel shall notify the Developer of its intention to sell, assign or transfer the parcel by a signed written notice to the Developer. The notice shall accurately describe the premises to be sold and Developer shall have forty-five (45) days from the date of receipt of said notice to exercise its option to purchase. Developer shall exercise its option to purchase by serving a written notice on the record owner within said forty-five (45) day period; and, in the absence of written notice of Developer's intent to exercise its option the record owner shall, if division of the lots has been approved, be free to sell to any person at any price. If the Developer seasonably exercises its option to purchase, Developer shall have forty-five (45) days from the date of its notice of exercise within which to tender the purchase price established pursuant to paragraphs A and B above. If the Developer does not exercise its option to purchase and the subject parcel is acquired by any purchaser other than Developer such new owners shall comply with these covenants and restrictions and the rules and regulations established pursuant to paragraph 9.A. regardless of prior compliance by the prior owner of the parcel.

7. Section 6, Waiver, is amended to read as follows:

Any delay or failure to enforce, any provision of these covenants, restrictions and easements in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply to the same or another situation at the same location or the same or similar situation at any other location in the Park or of any other provision of these covenants, restrictions and easements. The failure to enforce any provision of this Declaration on any occasion shall in no event be deemed a waiver of the right to do so thereafter as to the original breach or violation or any subsequent breach or violation. The invalidation of any provision of this Declaration by a court of competent jurisdiction shall not affect the validity of any other provision of this Declaration and all such other provisions hereof shall remain in full force and effect.

8. Subsection 8 (B) is amended to read as follows:

BK8526PG0026

All parking areas and driveways are to be paved.

9. Subsection 8 (C) is amended to read as follows:

The Developer may, in its sole and absolute discretion and upon such conditions as it may require, grant approval for the outside storage of material, supplies or products. Any approval for storage shall require that the storage be screened from view of abutting property owners and from the street.

10. Subsection 8 (D) is amended to read as follows:

All setback areas with the exception of driveways, sidewalks and other walkways shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground covering or material as approved by the Developer.

11. A new Section 12, "Civil Penalties" is added to read as follows:

12. Civil Penalties

A. Any person, including but not limited to the lot owner, his agent, contractor, subcontractor or any other person who violates any provision of this Declaration of Covenants and Restrictions shall in addition to all other liability, be liable to the Developer for the civil penalties set forth in this section.

B. 1. The minimum penalty for each violation shall be \$100.00 and the maximum penalty shall be \$500.00. Each day that a violation continues shall be treated as a separate violation.

2. In determining the amount of the penalty, the following factors shall be considered:

- a. whether there have been any prior violations by the same party,
- b. the extent of any harm to others,
- c. whether the violation was willful.

C. All proceedings for civil penalties shall be brought by the Developer and all penalties shall be paid to the Developer.

The State of Maine, Department of Environmental Protection, executes this Amendment for the purposes of indicating its consent and approval to the within Amendments and the First Amendment to Declaration of Covenants and Restrictions of Brunswick Industrial Park dated May 30, 1984, recorded in said Registry of Deeds in Book 6561, Page 179.

BK8526PG0027

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this third day of October, 1988.

TOWN OF BRUNSWICK

By: [Signature] S.H. McCausland S.H. McCAUSLAND  
 By: [Signature] DOUGLAS L. MORTON  
 By: [Signature] CHARLES E. CHAFEE  
 By: [Signature] MARIETTA R. BURBANK  
 By: [Signature] MARY ELLEN TRACHER  
 By: [Signature] ANNE M. PARRAU  
 By: [Signature] R.B. PINKHAM  
 By: [Signature] R.C. SHEPHERD

ATLANTIC DISTRIBUTORS BENEFIT ASSOCIATES

By: [Signature] PETER LEBOURDAIS  
 Lot Owner - general Partner - Lot #12  
 By: [Signature] Mary Alice H. Treworgy  
 Lot Owner Mary Alice H. Treworgy - Lot #11  
 By: [Signature] Austin E. Treworgy  
 Lot Owner Austin E. Treworgy - Lot #10  
 By: [Signature] William F. Slattery  
 Lot Owner William F. Slattery - Lots #7 & #8  
 By: [Signature] RICHARD A. MORFILL  
 Lot Owner Richard A. Morfill - Lot #13  
 By: [Signature] M.F. GOLFREY PARTNERS  
 Lot Owner Timothy M. O'Neil, HRC Development Co., Inc.  
 general Partner  
 Lots 1, 10 & 11  
 By: \_\_\_\_\_  
 Lot Owner  
 By: \_\_\_\_\_  
 Lot Owner  
 By: \_\_\_\_\_  
 Lot Owner

0X8526PG0028

By: \_\_\_\_\_  
Lot Owner

STATE OF MAINE

Cumberland, ss.

OCTOBER 4, 1988

Personally appeared before me the above-named CHARLES E. CHAFEE and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

Sherry L. Worth  
Notary Public/Attorney-at-Law  
114 Commission Expires 12-2-91  
SHERRY L. WORTH

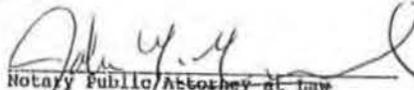
SEAL

STATE OF MAINE

Cumberland, ss.

22 August, 1988

Personally appeared before me the above-named Peter C. LeBuckis and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

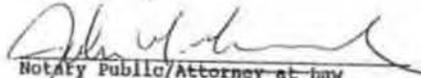
  
Notary Public/Attorney at Law  
MALE 3-3-90  
JOHN G. GERARD

STATE OF MAINE

Cumberland, ss.

22 August, 1988

Personally appeared before me the above-named May Alice H. Tenney and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

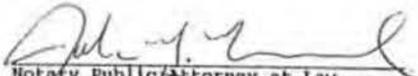
  
Notary Public/Attorney at Law  
MALE 3-3-90  
JOHN G. GERARD

STATE OF MAINE

Cumberland, ss.

22 August, 1988

Personally appeared before me the above-named Arthur E. Tenney and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

  
Notary Public/Attorney at Law  
MALE 3-3-90  
JOHN G. GERARD

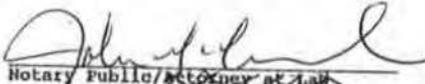
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STATE OF MAINE

Cumberland, ss.

23 August, 1988

Personally appeared before me the above-named William F. Slattery and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

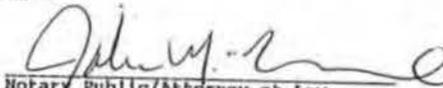
  
Notary Public/Attorney at Law  
MEC 3-3-90  
JOHN G. GERARD

STATE OF MAINE

Cumberland, ss.

23 August, 1988

Personally appeared before me the above-named Richard A. Merrill and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

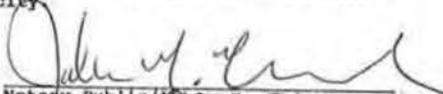
  
Notary Public/Attorney at Law  
MEC 3-3-90  
JOHN G. GERARD

STATE OF MAINE

Cumberland, ss.

24 August, 1988

Personally appeared before me the above-named Timothy M. O'Neil and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

  
Notary Public/Attorney at Law  
MEC 3-3-90  
JOHN G. GERARD

BK 8526PG0031

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 22nd day of August, 1988.

Lot 4 - David F. Domizi, III

By: [Signature]  
Lot Owner

Lot A - Susan E. Domizi

By: [Signature]  
Lot Owner

By: \_\_\_\_\_  
Lot Owner

STATE OF CONNECTICUT

COUNTY OF NEW HAVEN, ss. AUGUST 23, 1988

Personally appeared before me the above-named \_\_\_\_\_ and acknowledged the execution of the instrument to be his free act and deed in his said capacity.

[Signature]  
Notary Public

HELEN E. WENDT  
My Commission Expires Mar. 31, 1992

SEAL

RECEIVED  
REGISTERED DEEDS  
1988 OCT 24 PM 1:52

CUMBERLAND COUNTY

404

[Signature]

AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BRUNSWICK INDUSTRIAL PARK, BRUNSWICK, MAINE

The Town of Brunswick, a municipal corporation situated in Brunswick, Cumberland County, and State of Maine, owner of a certain parcel of land described in the Declaration of Covenants and Restrictions dated February 12, 1981, and recorded in Cumberland County Registry of Deeds Book 4739, Page 302, hereby amend the second paragraph of that Declaration to read as follows:

These parcels are shown and identified on a Plan of Land entitled "SUBDIVISION PLAN OF BRUNSWICK INDUSTRIAL PARK FOR TOWN OF BRUNSWICK JUNE 26, 1980" hereinafter referred to as "Plan," "Development," or "Park," which Plan is recorded in the Cumberland County Registry of Deeds in Plan Book 130, Page 16; and the revised version of which dated March, 1983, is recorded in Plan Book 144 Page 35. The word Plan shall also refer to any subsequent revisions of said Plan which may be recorded from time to time.

IN WITNESS WHEREOF, the Municipal Officers of the Town of Brunswick hereunto set their hands and seals.

Dated: May 30, 1984  
Richard A. Lora  
Richard A. Lora  
Reginald G. Pinkham  
Reginald G. Pinkham  
Edward F. Wilson  
Edward F. Wilson  
Paul E. Brunelle  
Paul E. Brunelle

By: \_\_\_\_\_  
Marybeth K. Burbank  
Marybeth K. Burbank  
Martin L. Wilk  
Martin L. Wilk  
Stephen H. McCausland  
Stephen H. McCausland  
Robert C. Shepherd  
Robert C. Shepherd

STATE OF MAINE  
CUMBERLAND, ss.

Personally appeared before me the above-named Robert C. Shepherd and acknowledged execution of the above instrument to be his free act and deed in his said capacity.

Dated: 5/30/84

By: Peter C. Fessenden  
Attorney-at-Law PETER C. FESSENDEN

RECEIVED  
RECORDED REGISTRY OF DEEDS  
1986 JAN 28 PM 12:48  
CUMBERLAND COUNTY  
Dianne J. Walsh

AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BRUNSWICK INDUSTRIAL PARK, BRUNSWICK, MAINE

The Town of Brunswick, a municipal corporation situated in Brunswick, Cumberland County, and State of Maine, owner of a certain parcel of land described in the Declaration of Covenants and Restrictions dated February 12, 1981, and recorded in Cumberland County Registry of Deeds Book 4739, Page 302, hereby amend the second paragraph of that Declaration to read as follows:

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IN WITNESS WHEREOF, the Municipal Officers of the Town of Brunswick hereunto set their hands and seals.

Dated: May 30, 1984

By: \_\_\_\_\_

Richard A. Lord  
Richard A. Lord  
R. Dinkham  
Reginald C. Dinkham  
Edward F. Wilson  
Edward F. Wilson  
Paul E. Brunelle  
Paul E. Brunelle

Marybeth K. Burbank  
Marybeth K. Burbank  
Martin L. Milk  
Martin L. Milk  
Stephen H. McCasland  
Stephen H. McCasland  
Robert C. Shepherd  
Robert C. Shepherd

STATE OF MAINE  
CUMBERLAND, ss.

SEAL

Personally appeared before me the above-named Robert C. Shepherd and acknowledged execution of the above instrument to be his free act and deed in his said capacity.

RECEIVED

Dated: 5/30/84

1984 SEP 14 AM 8:48

By: [Signature]  
Attorney-at-Law

RECORDED REGISTRY OF DEEDS  
CUMBERLAND COUNTY

James J. Walsh

3710

BRUNSWICK INDUSTRIAL PARK  
BRUNSWICK, MAINE

DECLARATION OF COVENANTS AND RESTRICTIONS

The Inhabitants of the Town of Brunswick, owners of a certain parcel of land described in deeds from Dorrill O. Lamb recorded in the Cumberland County Registry of Deeds in Book 4550, Page 212; Dennis G. Baribeau recorded in said Registry in Book 4550, Page 211; Wesley M. Gott and Mildred F. Gott recorded in said Registry in Book 4550, Page 220; Robert E. Dionne and Anita E. Tracy recorded in said Registry in Book 4550, Page 223; Roland A. Dionne recorded in said Registry in Book 4553, Page 24; Bertrand R. Dionne recorded in said Registry in Book 4553, Page 179 are prepared to sell and convey ownership of certain lots and parcels of land from the aforementioned premises.

These parcels are shown and identified on a Plan of land entitled "SUBDIVISION PLAN OF BRUNSWICK INDUSTRIAL PARK FOR TOWN OF BRUNSWICK JUNE 26, 1980" hereinafter referred to as "Plan", "Development" or "Park", which Plan is recorded in the Cumberland County Registry of Deeds in Plan Book 130, Page 16. The word Plan shall also refer to any subsequent revisions of said Plan which may be recorded from time to time.

In order to preserve the industrial qualities of the Development without injuring the natural beauty and rural qualities of adjacent or nearby land and in order to provide each owner of a parcel of land purchased pursuant to the Plan with assurances that the lots and parcels of land surrounding his parcel will be subject to reasonable safeguards against acts and uses which could harm the nature and value of his property, the Inhabitants of the Town of Brunswick (hereinafter sometimes referred to as "Developer") impose upon the lots and parcels of land described on the Plan certain mutual and beneficial easements, covenants and restrictions.

NOW, THEREFORE, the Developer hereby declares that each and every lot or parcel of land shown on the Plan, shall be conveyed subject to, and with benefit of, easements, covenants and restrictions set forth in this Declaration, and all of the provisions of this Declaration shall be deemed to be incorporated and included therein as if set forth in full in the deed. All of the provisions of this Declaration shall be deemed to be reciprocal covenants running with the land.

Definitions: As used in this Declaration:

- (a) The word "Developer" shall mean and refer to the

Inhabitants of the Town of Brunswick and their agents, nominees, successors and assigns.

(b) When referring to parties against whom this Declaration may be enforced, the words "owner" or "lot owner" shall mean and refer to any person having record title to a lot or parcel of land shown on the Plan and/or any person who has a legal or equitable interest (possessory or otherwise), or claim therein (including but not limited to interests created by lease, will, contract, adverse possession or prescription). In all other instances the words "owner" or "lot owner" shall refer to title holders and owners of record.

(c) The word "parcel" shall mean and refer to any premises, lot or parcel of land shown on the Plan, or part or combination thereof.

(d) The word "Park" shall mean and refer to the development as shown on the Plan in its developed, partially developed or undeveloped state.

(e) Whenever and wherever the context of this Declaration so requires, the singular shall include the plural and gender shall be modified to correspond with the appropriate gender.

(f) The word "person" shall, where the context hereof may require, mean and refer to any natural born person and any legal entity, including but not limited to, corporations, partnerships, trusts and associations.

1. Covenants and Enforceability.

A. The following covenants, restrictions and easements shall run with the land designated on the Plan, the land conveyed pursuant to the Plan and the land in the Park retained by the Developer. Any subsequent conveyances, leases, mortgages or other dispositions of such land or any part thereof shall be subject to these covenants and restrictions and easements.

B. The covenants, restrictions and easements set forth in this Declaration shall not terminate or otherwise expire until January 1, 2021.

C. The covenants, restrictions and easements shall be jointly and severally enforceable by the Developer and its assigns and by its grantees, their successors and assigns; provided, however, only the Developer shall have the right to exercise the discretionary powers hereinafter reserved to it. The violation or attempted violation of any covenant, restriction or easement in the Declaration is hereby declared a nuisance which may be remedied

by any appropriate legal proceeding. If any landowner shall attempt to violate, violate, or permit any violation of any of the covenants, restrictions or easements described in this Declaration, the Developer or any owner of a parcel may commence proceedings at law or equity, either to recover damages or other awards for attempts or violations, or to enjoin the furtherance or continuation of such attempts or violations, or both.

By accepting delivery of a deed to a parcel of land shown on the Plan each owner of record covenants that if a judgment is rendered against such owner as a result of an action or actions brought on this Declaration, to pay all reasonable costs, including reasonable attorney's fees, incurred in the prosecution of said claim. By acceptance of a deed to a parcel subject to the provisions of this Declaration, each owner covenants and agrees to abide by all such provisions.

D. In the event of a violation or breach of any of the covenants, restrictions, easements or agreements set forth in this Declaration, and if such breach or violation has not been remedied or corrected within thirty (30) days after delivery of notice of such violation or breach by the Developer to the occupant of the parcel on which the violation or breach has occurred, [or in the alternative, within thirty (30) days after mailing such notice to the record owner of such parcel at his last known address] the Developer shall have, in addition to other remedies and rights it enjoys, the following remedy and right: The Developer may enter upon the parcel as to which such violation or breach has occurred or exists and summarily abate and remove any erection or thing or correct any condition which constitutes such violation or breach. Actions taken by the Developer pursuant to this paragraph including reasonable attorney's fees shall be at the expense of the owner of such parcel, which expense shall be an encumbrance and lien on such parcel, notice of which shall be recorded in the Cumberland County Registry of Deeds.

## 2. Land Use.

A. Prior to any development of a lot the owner or prospective owner, with the consent of the Developer and on behalf of the Developer, shall submit to the Department of Environmental Protection, for review and approval, a plan for such lot's development. The plan shall include, and not be limited to, the type and size of industry, location of all structures, types and volumes of wastes to be generated and disposed of, the location and nature of disposal, the types and volume of traffic anticipated, and individual lot landscaping and/or visual screening plans.

B. Each parcel shall be used for only those uses permitted in an Industrial Park Zone and if none, an Industrial Zone,

defined by the Town of Brunswick Zoning Ordinance then in effect, and no parcel set forth on the Plan may be used for any purpose other than those purposes permitted in said Zone. Any uses for which special exceptions are required in said Zoning Ordinance are prohibited unless such special exception is properly granted and such use is approved in writing by the Developer. Any uses which are generally considered to be noxious or offensive, including but not limited to, tanneries, evisceration plants and junkyards are prohibited.

C. Fish, shellfish and food processing or treatment and preparation of any animal or vegetable materials for human or animal use or consumption (hereafter referred to as food processing) present unique problems of liquid and solid waste, storage, removal, disposal and treatment, and potentially unhealthful and noxious nuisances and odors. Lots numbered 1, 6, 7 and 14 may not be used for any industry engaged in food processing; and, food processing is a prohibited use on the remaining interior lots except that the Developer may, at its sole discretion, on a time by time and lot by lot basis, permit such use on any one of the interior lots on such specific conditions and subject to such additional restrictions as it shall deem proper.

D. The Developer reserves the right to further limit or restrict the use of any particular parcel; and, such further limitations or restrictions shall be contained in the deed of the Developer conveying said parcel and shall apply to only the parcel(s) to which such restrictions are specifically directed in said deed.

E. No use will be made of any parcel and no materials or products may be manufactured, processed or stored thereon which cause or constitute, or in the opinion of the Developer may cause or constitute, an undue fire hazard, a nuisance, the omission of noxious odors, gases or smoke or cause noises or vibrations or other conditions which may have a detrimental effect on the surrounding environment or other lot owners in the Park.

F. The drainage way on the northern portion of Lot 11 as indicated on the Plan and as found on the land shall be maintained as a permanent feature of the landscape and no disturbance of natural ground cover shall occur within a twenty (20) foot perimeter of the crest of the drainage way until such time as the use of the railroad necessitates an alteration or elimination of this feature.

### 3. Setbacks, Plans and Specifications.

A. (1) No building, any part thereof, or projection therefrom, shall be erected on, within or extend over a strip of land fifty

(50) feet in width from any road, or "future road" shown on the Plan, and twenty (20) feet of any boundary line of a parcel on which a building is erected unless the Developer gives written consent, in recordable form, to a lot owner in an instance where a setback need not be met due to abutting rail spurs and/or common loading facilities; provided, however, in the event title to two or more contiguous parcels are owned by the same person the twenty (20) foot setback restrictions shall not apply to interior boundary lines between the contiguous parcels. All parcels which abut residential property and lots numbered 6 and 14 on said Plan shall have and maintain a fifty (50) foot wide buffer zone along any bound which is common with residential property and Greenwood Road, which buffer zone shall not be utilized for building or parking as long as the abutting property is used for residential purposes and, in the case of the buffer zones along Greenwood Road, they shall not be utilized for building or parking as long as the property directly across Greenwood Road from the affected parcel is used for residential purposes. At the expiration of said residential uses, applicable setback restrictions shall continue in force.

(2) Lots 1, 2, 7, 8 and 9 on said Plan are subject to an additional buffer zone which runs in width from the thread of an unnamed brook to a line fifty (50) feet beyond (toward the interior of each lot) and parallel with the top of the bank of said brook, and the length of said buffer zone extends along said line parallel with and fifty (50) feet from the top of the bank for the length of said bank. Said buffer zone is more particularly determined by the contour of the land. That portion of the buffer zone which lies between the thread of the brook and the top of the bank may not be used or altered by the owner or occupant of any parcel except with prior written approval of the Developer. The portion of said buffer zone lying between the top of the bank and the inside bound of the buffer zone shall not have any structure erected upon it or extend over it; provided, however, said portion of the buffer zone may be used for parking and drainage.

(3) Any of the aforementioned setback areas,

residential buffer zones and the buffer zone from the top of the bank of said stream to the interior of lots 1, 2, 7, 8 and 9 may be landscaped for beautification and erosion prevention.

B. No building, fence, wall, sign, loading facility, outside storage facility, parking area, landscaping, facility for industrial waste or sewage disposal, nor any other improvement shall be commenced, erected or constructed, nor shall any addition thereto or change or alteration therein be made (except to the interior of a building), nor shall any change in the use of any premises be made, until the plans and specifications therefor, showing the nature, kind, shape, heights, materials, color scheme, and lighting, of the exterior of the structure and location on the lot of the proposed improvements, grading, landscaping or alterations and the proposed use or change in the use of the premises, shall have been submitted to and approved in writing by the Developer and a copy of such plans and specifications as finally approved lodged permanently with the Developer. The Developer shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which the Developer, in its sole discretion, may deem in the best interest of the Park and the owners or lessees or prospective owners or lessees of other properties therein.

C. Parking is prohibited on all roads and "future roads" as shown on said Plan. Each lot owner shall provide, subject to the setback and buffer restrictions, necessary and adequate parking facilities and private driveways, subject to the Developer's approval.

D. The construction, alteration and use of any and all improvements within the Park shall be in accordance with the requirements of all applicable state and local building, zoning, health and other statutes, codes, ordinances and regulations.

E. No lot or parcel may be subdivided or resubdivided unless the smallest lot produced thereby has a minimum lot size of two (2) acres or more.

#### 4. Construction and Maintenance.

A. All exterior construction on any building or structure shall be completed within two (2) years from the date construction (including excavation) begins unless the Developer extends such period in writing.

B. During construction it shall be the responsibility of each lot owner to insure that construction sites are kept free

of unsightly accumulations or rubbish and scrap materials, and that construction materials, trailers, sheds, and the like are kept in a neat and orderly manner.

C. Each lot owner shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from his premises.

D. The Developer will maintain all undeveloped land owned by it within the Park in a manner compatible with the provisions of this paragraph 4.

5. Repurchase Options.

A. If a purchaser, or his successors and assigns, of a parcel has not begun, in good faith, the construction of an acceptable building within two (2) years from the date of execution of a purchase and sale agreement for the parcel with the Developer [and if none two (2) years from the date of execution of the deed from the Developer to purchaser] or construction of a building or structure has not been completed pursuant to paragraph 4.A. of this Declaration, the Developer shall have the option, at its discretion, to enter onto the premises, take possession of the parcel, enforce the issuance of a deed to the Developer and refund the original purchase price (that price which was originally paid to Developer) without interest to the then owner.

B. Developer shall have a right of first refusal in the event of any proposed transfer or sale of a parcel as follows:  
In the event any owner of record of a parcel of land within the Park desires to sell all or part of that portion of a parcel which is unimproved, separate and apart from the improved portion of the parcel, then the Developer shall have the prior right and option to purchase the unimproved portion of the parcel at the same price and terms paid by the original owner of record to Developer for said parcel when originally acquired; said repurchase price to be based on prorated square footage.

C. Prior to any proposed sale of all or part of a parcel of land within the Park which parcel has come under the terms of paragraph B above, the owner of record of the parcel shall notify the Developer of its intention to sell, assign or transfer the parcel by a signed written notice to the Developer. The notice shall accurately describe the premises to be sold and Developer shall have forty-five (45) days from the date of receipt of said notice to exercise its option to purchase. Developer shall exercise its option to purchase by serving a written notice on the record owner within said forty-five (45) day period; and, in the absence

of written notice of Developer's intent to exercise its option the record owner shall be free to sell to any person at any price. If the Developer seasonably exercises its option to purchase, Developer shall have forty-five (45) days from the date of its notice of exercise within which to tender the purchase price established pursuant to paragraphs A and B above. If the Developer does not exercise its option to purchase and the subject parcel is acquired by any purchaser other than Developer such new owners shall comply with the rules and regulations established pursuant to paragraph 9.A. regardless of prior compliance by the prior owner of the parcel.

6. Waiver.

Any delay or failure to enforce, any provision of these covenants, restrictions and easements in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply to the same or another situation or the same or similar situation at any other location in the Park or of any other provision of these covenants, restrictions and easements. The failure to enforce any provision of this Declaration on any occasion shall in no event be deemed a waiver of the right to do so thereafter as to the original breach or violation or any subsequent breach or violation. The invalidation of any provision of this Declaration by a court of competent jurisdiction shall not affect the validity of any other provision of this Declaration and all such other provisions hereof shall remain in full force and effect.

7. Nominees, Agents and Successors of Developer.

The Developer may from time to time assign and/or delegate any or all of its rights, powers, discretion and duties hereunder to such agent or nominee as it may appoint or nominate. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by deed or this Declaration to any one or more corporations, associations or persons that will accept the same. Any such assignment shall be in a recorded writing and the assignee shall join thereafter 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 Developer and the Developer shall thereupon be released therefrom.

8. General Standards.

A. No more than fifty percent (50%) of any parcel shall

be covered by buildings.

B. All parking areas are to be paved.

C. No material, supplies, or products shall be stored or permitted to remain on the premises outside a permanent structure without the prior written consent of the Developer. Approval of outside storage will be temporary and will be granted only where storage is screened from view.

D. All setback areas facing roads between the building and the curb, with the exception of driveways, sidewalks and other walkways shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground covering or material as approved by the Developer.

E. The Developer may, from time to time, enter onto a parcel or lot to inspect the same for compliance with this Declaration and Operating Rules and Regulations.

F. Occupants of the Park shall not cause or make any excessive noise, odors, harmful sewage, vibration or nuisance that would conflict with the purposes or restrictions of the Park.

G. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored material, rubbish and debris.

H. All buildings and grounds shall be maintained in good condition and repair.

9. Administrative and Operating Regulations.

A. The Developer may, from time to time, adopt and amend such administrative rules and regulations for the sale and development of parcels within the Park, the review of proposals, plans and uses, and the carrying out of its responsibilities and duties set forth in this Declaration, as it shall deem fit and necessary. The Developer may require that an owner of a lot provide evidence of financial responsibility and/or post a performance bond prior to lot development to guarantee the owner's compliance with these covenants and any additional standards or restrictions placed on the owner or lot.

B. The Developer may, from time to time, adopt and amend such operating rules, regulations and additional General Standards governing the use and operation of the Park.

10. Notice.

All notices required hereby shall be in writing and served on the intended recipient by Certified Mail.

11. Separability.

If any provisions of these covenants are declared to be invalid, that declaration does not affect the remainder of the covenants.

IN WITNESS WHEREOF, the said Developer has caused this instrument to be sealed with its corporate seal and signed in its corporate name by ~~REGINALD G. PINKHAM~~, EDWARD F. WILSON, MARTIN L. WILK, VERN WARREN, DAVID L. WHITE, REGINALD G. PINKHAM, GARLAND J. DAVIS, ROBERT C. SHEPHERD and STEPHEN H. McCausland, ~~as a majority of its Municipal Officers~~ therunto duly authorized this twelfth day of February, 1981, as a majority of its Municipal Officers.

SIGNED, SEALED AND DELIVERED  
in the presence of:

INHABITANTS OF THE TOWN OF BRUNSWICK

*John P. Allen*  
*To all eight*

*St. McCausland*  
*Mark J. Wilson*  
*Garland J. Davis*  
*Edward F. Wilson*  
*Vern Warren*  
*David L. White*  
*R. Pinkham*

STATE OF MAINE  
Cumberland, ss.

February 12, 1981

Then personally appeared the above-named REGINALD G. PINKHAM and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said body corporate.

Before me,  
*Shirley L. Eastman Belanger*  
Justice of Peace/Notary Public

FEB 13 1981

REGISTRY OF DEEDS CUMBERLAND COUNTY, MAINE  
Received at 2 426 PM, and recorded in

BOOK 4739 PAGE 302 *Edward J. Brunstein* Registrar

May 11, 2020

Charles Frizzle, Chair  
Town of Brunswick Planning Board  
85 Union Street  
Brunswick, Maine 04011

**RE: GJoris, LLC  
Major Development Review Conditional Use Application  
Marijuana Store – Adult Use  
4 Business Parkway, Brunswick, Maine  
Tax Map 17, Lot 66**

Dear Chairman Frizzle:

I represent GJoris, LLC (the “Applicant”) in connection with the above-referenced conditional use application. It has come to my attention that concern has been raised about the Applicant’s ability to meet the criteria set forth in §§ 5.2.2.B(2) and 5.2.2.B(4) of the Brunswick Zoning Ordinance (“BZO”). What follows is an explanation of why the application meets the governing terms of the BZO. Additionally, this letter outlines why, if the Planning Board interprets § 5.2.2.B to preclude the Applicant’s proposed use, such a determination would be unlikely to survive a legal challenge.

**I. THE APPLICANT MEETS THE REQUIREMENTS OF § 5.2.2(B) OF THE BZO.**

On Friday May 8, 2020, Planning Director, Matthew Panfil was kind enough to share the draft findings he generated for the Planning Board’s consideration so that the Applicant would have an opportunity to respond prior to the meeting scheduled for May 12, 2020. The draft findings indicated that except for §§ 5.2.2(B)(2) and (4) of the BZO, the Applicant meets all governing conditional use approval criteria. For the reasons outlined in Applicant’s Project Manager, Joseph Marden’s May 6, 2020 letter to Jared Woolston, and the additional reasons he will explain at tomorrow night’s meeting, we respectfully disagree with Mr. Panfil’s assessment that the Applicant does not meet the criteria specified in § 5.2.2(B) and ask that the Planning Board find that the proposed marijuana store meets all governing conditional use criteria.

Section 5.2.2(B) provides, in relevant part, as follows:

The following Criteria shall be applied, by the Planning Board when considering an application for a Conditional Use Permit. The burden of proof of compliance with these standards rests with the applicant.

- (1) The proposed use will not create significantly more vehicular traffic by patrons, residents, or suppliers than the uses and structure currently within 300 feet of the proposed use or structure that generates the most vehicular traffic.

Charles Frizzle, Chair,  
Town of Brunswick Planning Board  
May 11, 2020  
Page 2

- (2) The proposed use shall not create any more adverse impacts on any current use or structure within 300 feet of the lot on which the proposed use or structure would be located.<sup>1</sup>

Mr. Marden explained in detail in his May 6<sup>th</sup> letter why the proposed use will not create significantly more traffic. In sum, the additional traffic contemplated by the proposed use would be well within the number of trips permitted under the existing Traffic Movement Permit (TMP) issued by MaineDOT for the site. Mr. Marden also described how the Times Record building (located at 3 Business Parkway), which is within 300 feet of the subject property, generated a number of vehicle trips extremely similar to what is currently being proposed. While the Applicant's proposed use is expected to generate 93 trips in the PM peak hour, the Times Record building generated 86 peak PM trips at the time that the TMP was issued. The addition of 7 peak hour trips can hardly be considered "significantly more" vehicular traffic.

The proposed use generates similar levels of traffic as other uses (both current and historic) within GI zone, and specifically, within the same park in which the proposed use will be located. In addition to the historic traffic data from the Times Records building discussed above, the LL Bean Manufacturing Center (located at 8 Industrial Parkway) generates 99 AM Peak Trips and 96 Peak PM Trips.<sup>2</sup> When compared to the traffic generated by LL Bean's existing use in the GI zone, the Applicant's proposed use would actually generate *less* trips, not "significantly more."

The amount of traffic trips to be generated by the proposed use is not only well within what MaineDOT has permitted, but also what the BZO contemplated for the GI Zone, (which is designated as a "growth area" and includes "lands appropriate for an industrial and other types of more intensive non-residential development.") *See* 2.1.G of the BZO. By expressly allowing marijuana stores in the GI Zone, such uses were implicitly deemed compatible with surrounding uses.

Based on the information in Mr. Marden's May 6th letter and what you will hear from him at your meeting tomorrow night, the proposed use produces neither "significantly more traffic" nor "more adverse impacts" on current uses and structures within 300 feet that generate the most vehicular traffic.

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<sup>1</sup> The draft findings suggest that the Planning Board should conclude that the Applicant does not meet either of the standards set forth in § 5.2.2.B(2) or § 5.2.2.B(4). However, the *sole* reason § 5.2.2.B(4) cannot be met according to the Planning Director is because the proposed use will create "significantly more traffic," thereby creating "more adverse impact." Accordingly, § 5.2.2.B(2) will be the focus of this analysis.

<sup>2</sup> Attached collectively as ***Exhibit 1***, are the tax card for this property together with excerpts from the ITE Manual outlining trip generation rates associated with "Manufacturing" uses.

**II. AN INTERPRETATION OF § 5.2.2(B) OF THE BZO THAT DENIES APPLICANT’S PROPOSED USE WOULD BE UNLIKELY TO SURVIVE LEGAL CHALLENGE.**

For the reasons that follow, a determination by the Planning Board that § 5.2.2.B precludes the Applicant’s proposed use would be unlikely to survive a legal challenge.

**A. The Requirement in § 5.2.2.B That a Proposed Conditional Uses “Not Create Significantly More Traffic Than Current Uses Within 300 Feet” Effectively Prohibits Marijuana Uses in the Town of Brunswick. Such a Result is Contrary to the Clear Intent of Both Brunswick Voters and the Town Council. It Also Violates Governing Law.**

Brunswick voters approved the legalization of adult use marijuana by a convincing margin at the statewide initiative in November 2016. In keeping with the will of the majority of Brunswick voters, the Council approved marijuana uses (*including* medical and adult use storefronts) as conditional uses in the GI Zone. Locating marijuana uses exclusively in the GI zone was recommended by the Town’s Marijuana Working Group, which was comprised of a diverse array of stakeholders.

If § 5.2.2(B)(2), (which requires that a proposed conditional use not create significantly more traffic than “*current*” uses within 300 feet), is narrowly interpreted to preclude the Applicant’s proposed marijuana store, it would thwart the clear intention of both Brunswick voters and the Town Council. Moreover, such an interpretation would not only require denial of the Applicant’s pending application, the practical upshot would be to preclude almost *any* marijuana stores from being located in the GI Zone at the present time.

A review of the various *current* uses allowed in the GI Zone suggests that they are largely industrial, manufacturing, institutional, and service uses. *See* Land Use Table at § 3.2 of the BZO. These kinds of uses, by their very nature, generate far less vehicular trips than would a marijuana store. Despite this, the Council (upon advice of the Marijuana Working Group, including the Police Department) felt strongly that the only appropriate location in Brunswick for marijuana uses was the GI zone. By allowing marijuana stores solely in the GI zone, and simultaneously requiring that they not generate significantly more traffic than their neighbors, the BZO creates a virtually impossible standard for marijuana stores to meet if § 5.2.2(B)(2) is interpreted as recommended in the draft findings.

While marijuana stores are expressly listed as allowable uses in the GI zone under the clear wording of § 3.2 of the BZO, practical realities dictate that applications for this conditional use will likely be universally denied. Because marijuana stores will inevitably generate significantly more traffic than *current* neighboring industrial, manufacturing, institutional, transportation and service uses, it is practically assured that they will be denied under §5.2.2.B if interpreted as suggested in the draft findings.

Charles Frizzle, Chair,  
Town of Brunswick Planning Board  
May 11, 2020  
Page 4

The Planning Director himself candidly conceded this point, adding the following note to the Planning Board in the draft findings:

“...please note that the Planning staff concurs with the applicant’s assessment that marijuana stores by their very nature are consumer-oriented and will likely generate more traffic than an industrial use and *there is a question if a marijuana store, though listed as a conditional use in the GI Zoning District, could ever fulfill this conditional use permit review criteria.*”

Such a clear contradiction between the express provisions of § 3.2 of the BZO, (which allows marijuana stores) and the terms of § 5.2.2(B)(2), (which would effectively zone them out of existence if interpreted as advocated in the draft findings) is legally untenable. On the other hand, interpreting § 5.2.2(B)(2) to allow the proposed marijuana store would be consistent with Maine law that requires courts to evaluate the language of a municipal ordinance in light of the entire ordinance scheme to achieve a harmonious result. *Desfosses v. City of Saco*, 2015 ME 151, 128 A.3d 648.

Interpreting § 5.2.2(B) to allow the proposed use would also honor the well-established principle that “[c]ourts must construe legislative enactments so as to avoid a danger of unconstitutionality .... The cardinal principle of statutory construction is to save, not to destroy.” *Stewart v. Inhabitants of Town of Durham*, 451 A.2d 308, 311 (Me. 1982) citing *State v. Davenport, Me.*, 326 A.2d 1, 5–6 (1974). *See also* 82 Am.Jur.2d, *Zoning & Planning* § 68, at 500 (1976) (“where a zoning ordinance is susceptible of two different reasonable constructions, one of which will render the ordinance valid and the other render it invalid, the court will adopt the one which renders it valid”); *See also Driscoll v. Gheewalla*, 441 A.2d 1023, 1027–28 (Me. 1982).

**B. The Requirement That Proposed Conditional Uses “Not Create Significantly More Traffic Than Current Uses Within 300 Feet” Effectively Denies Applicant a Reasonable Opportunity to Operate a Marijuana Store Anywhere in Brunswick, Contrary to Law.**

Courts across the country have acknowledged that it is legally untenable to establish a zoning standard that is logistically impossible to meet.

Cases involving the zoning of adult entertainment uses make clear that in order to pass constitutional muster, zoning ordinances must afford a reasonable opportunity to locate and operate such businesses at least *somewhere* within a municipality. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *D.H.L. Assocs., Inc. v. O’Gorman*, 199 F.3d 50, 52 (1st Cir. 1999). Courts have upheld zoning restrictions that limited controversial land uses to a relatively small fraction of the municipal land area, and in particular, to industrial zones. *See, e.g., Woodall v. El Paso*, 49 F.3d 1120 (5th Cir. 1995); *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215 (1989). However, even where (as here) zoning ordinances do not *outright* prohibit such businesses, courts have stated that they are subject to invalidation if they *effectively* deny them the ability to operate. *See, e.g., Lady J.*

Charles Frizzle, Chair,  
Town of Brunswick Planning Board  
May 11, 2020  
Page 5

*Lingerie, Inc. v. Jacksonville*, 176 F.3d 1358, 1361 (11th Cir.), *pet. for cert. filed*, No. 99-356 (1999); *Topanga Press, Inc. v. Los Angeles*, 989 F.2d 1524, 1530-31 (9th Cir. 1993); *Walnut Properties, Inc. v. City of Whittier*, 861 F.2d 1102, 1108-10 (9th Cir. 1988), *cert. denied*, 490 U.S. 1006 (1989).

According to the First Circuit, “when determining whether [an] ordinance provides a reasonable opportunity for adult businesses to open and operate requires an evaluation of multiple factors.....including the percentage of land theoretically available...”. *D.H.L. Assocs.*, 199 F. 32 at 59. The First Circuit also indicated that such uses must be put on “equal footing” with other land uses allowed in the zone. *D.H.L. Assocs.*, 199 F. 32 at 60.

A few examples bring into sharp focus why interpreting § 5.2.2(B) as advocated in the draft findings does not treat marijuana stores on “equal footing” with other allowed uses in the GI Zone.

“**Currently**,” there is only one use known to be operating in the entire GI Zone that generates a number of vehicular trips roughly similar to what a marijuana store would, (the LL Bean Manufacturing Centre located 8 Industrial Park Way). While Flight Deck Brewing (located 11 Atlantic Road) is one of the largest operations in the GI Zone, it is still likely to generate substantially less trips than the proposed use at 68 PM Peak Trips.<sup>3</sup> The now defunct Bank of America call center (previously located at 5 Industrial Parkway) also generated substantially more trips than other uses currently operating in the GI zone (i.e., 37 AM Peak Trips and 36 PM Peak Trips).<sup>4</sup> Even though the Bank of America call center had one of the highest known trip counts (historically or otherwise) in the GI Zone, it still generated significantly less trips than a marijuana store.

Research indicates that there are no parcels or structures **currently** available in the GI Zone that would allow a marijuana store to meet the traffic standards set forth in § 5.2.2(B)(2). A review of the website of New England Commercial Properties (the most often-consulted resource to find commercial properties for sale or lease in New England), shows that only there only three properties available in Brunswick’s GI Zone: (1) 349 Bath Road (vacant parcel); (2) 119 Purinton Road (office space industrial); and (3) 11 Industrial Parkway (vacant parcel). See <https://www.newenglandcommercialproperty.com>. Mr. Marden confirms that none of these properties is located within 300 feet of any property within the GI Zone that would generate a number of trips even remotely similar to those proposed by the Applicant’s use.

The examples cited above, together with the Planning Director’s comments acknowledging how doubtful it is that a marijuana store could ever obtain conditional use approval, plainly

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<sup>3</sup> Attached collectively as **Exhibit 2**, are the tax card for this property together with excerpts from the ITE Manual outlining associated trip generation rates.

<sup>4</sup> Attached collectively as **Exhibit 3**, are the tax card for this property together with excerpts from the ITE Manual outlining associated trip generation rates.

demonstrate that marijuana stores, by their very nature, are *not* on “equal footing” with the other permitted use in the GI Zone. Because they will inevitably generate more vehicular trips than the industrial, manufacturing, and other uses allowed in the GI zone, marijuana stores are not on “equal footing,” which is contrary to law.

**III. The Requirement That Proposed Conditional Uses “Not Create Significantly More Traffic Than ‘Current’ Uses Within 300 Feet” Inevitably Leads to Absurd and Inconsistent Results, Contrary to Maine Law, Because it is Based on Constantly Changing Criteria.**

It is well-established law in Maine that ordinance provisions must be interpreted in a manner that will avoid unintended, illogical, absurd or inconsistent results. *See Wuori v. Otis*, 2020 ME 27, ¶ 6 citing *Andrews v. Sheepscot Island Co.*, 2016 ME 68, ¶ 9, 138 A.3d 1197; *Eagle Rental, Inc. v. State Tax Assessor*, 2013 ME 48, ¶ 11, 65 A.3d 1278, 1281.

The practical upshot of making every approval contingent on “current” uses within 300 feet is that the fate of all proposed marijuana stores rise and fall on what businesses just happen to be operating in close proximity to their proposed site at any particular moment in time. Such an ephemeral and fleeting standard is contrary to law because it invites inconsistent results. A few examples will demonstrate why such a standard is legally untenable and contrary to sound land use policy.

There is only one business currently operating in the GI zone that generates a number of vehicular trips similar to a proposed marijuana store (the LL Bean Manufacturing Center). Accordingly, under the interpretation of § 5.2.2(B) espoused in the draft findings, the only way a proposed marijuana store could ever get approved would be in the extraordinarily unlikely event that there was an available site within 300 feet of this *particular* property.

Also, if § 5.2.2(B) is interpreted as suggested in the draft findings, it is entirely possible that an application that was approved by the Planning Board at one meeting, would need to be denied at the very next meeting. In the scenario outlined in the foregoing paragraph, if the LL Bean Manufacturing Center were to go out of business during this one-week intervening period, the result before the Planning Board -- even if all other factors were identical -- would be drastically different. As has been made painfully evident during the COVID-19 pandemic, such a scenario is a distinct possibility. This pandemic has taught us that what was a thriving business one day can be shuttered the next. Sound land use planning and regulations cannot reasonably be based on such a moving target as the trip counts generated by a neighboring use on a particular day. Relying on such unpredictable standards leads to precisely the kind of unintended, absurd and illogical results that Maine law requires Planning Boards to avoid.

**IV. The Requirements in §§ 5.2.2(B)(2) and (4) That the Proposed Conditional Use Not Create “Significantly More Traffic” or “More Adverse Impacts” on Nearby Uses Violate Constitutional Due Process Requirements.**

Statutes and ordinances will be invalidated by courts as “void for vagueness” “when people of common intelligence must guess at [their] meaning.” *State v. Peck*, 2014 ME 74, ¶ 10, 93 A.3d 256. Maine’s highest court has repeatedly invalidated municipal conditional use standards on constitutional due process grounds holding that, “in order to withstand attack...ordinances that establish criteria for acceptance of a conditional use must specify sufficient reasons why such a use may be denied.” *Gorham v. Town of Cape Elizabeth*, 625 A. 2d 898, 900 (Me. 1993). This is because “[d]evelopers are entitled to know with reasonable clarity what they must do under state or local land use control laws to obtain the permits or approvals they seek.” *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 12, 752 A.2d 183. Neither the developer nor the board reviewing the conditional use application should have to “guess at the meaning of a statute ‘leaving them without assurance that their behavior complies with legal requirements...’” *Id.* citing *Shapiro Bros. Shoe Co. v. Lewiston–Auburn Shoeworkers Protective Ass’n*, 320 A.2d 247, 253 (Me.1974)

Here, when considering whether the proposed use produces “significantly more traffic” and/or “more adverse impacts” on nearby uses under § 5.2.2(B), the Applicant is forced to ask, “What must I present to gain the board’s approval?” Similarly, the Planning Board is forced to wrestle with the question, “Under what set of facts do we grant or withhold approval?” These are the exact questions that Maine’s Supreme Judicial Court concluded would render an ordinance void on its face. *Kosalka*, 2000 ME 106, ¶ 13 citing *Stucki v. Plavin*, 291 A.2d 508, 510 (Me.1972).

The standards established §§ 5.2.2(B)(2) and (4) are extremely similar to those that have been struck down as unconstitutional in Maine. *See Cope v. Town of Brunswick*, 464 A.2d 223, 227 (Me. 1983) (invalidating two following criteria: (1) “[t]he use requested will not adversely affect the health, safety or general welfare of the public”; and (2) “the use requested will not...alter the essential characteristics of surrounding property”). Because both the Applicant and the Planning Board are left without any discernible guidance as to what standards to apply when determining what would constitute “significantly more traffic” and/or “more adverse impacts,” it would be very unlikely for them to survive a legal challenge.

## **V. Conclusion:**

As explained in Joseph Marden’s May 6th letter, and as he will further describe at tomorrow night’s meeting, the proposed use can meet the requirements of § 5.2.2(B) if interpreted as advocated above. To do so would be consistent with the court’s guidance that “where a zoning ordinance is susceptible of two different reasonable constructions, one of which will render the ordinance valid and the other will render it invalid,” then the one that renders it valid should be applied. *See Driscoll v. Gheewalla*, 441 A.2d 1023, 1027–28 (Me. 1982). However, a denial of the application based on the interpretation suggested in the draft findings would likely be struck down on appeal for the many reasons outlined above.

Accordingly, we request that the Planning Board find the proposed marijuana store meets all governing conditional use criteria, including §§ 5.2.2(B) of the BZO, and that it approve the Applicant’s conditional use application.

Charles Frizzle, Chair,  
Town of Brunswick Planning Board  
May 11, 2020  
Page 8

We thank you for your consideration of this matter.

Sincerely,

Leah B. Rachin

cc: Michael DiPersia  
Joseph J. Marden, PE

A handwritten signature in black ink, appearing to be the name Leah B. Rachin, written in a cursive style.

CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT			
L L BEAN INC						Description	Code	Appraised Value	Assessed Value
1 CASCO ST						INDUSTR.	4000	5,430,500	5,430,500
FREEPORT, ME 04033						IND LAND	4000	620,800	620,800
Additional Owners:						INDUSTR.	4000	193,000	193,000
SUPPLEMENTAL DATA									
Other ID: 017-050-000-001		Park ID							
Type 4		# Of Units							
Use 71		File TG Date							
Special Cond		Status							
Mobile Home		Subdivision							
Moho Serial		ASSOC PID#							
GIS ID:									
<b>Total</b>								<b>6,244,300</b>	<b>6,244,300</b>

3203  
BRUNSWICK, ME

**VISION**

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
L L BEAN INC		10166/ 236	07/07/1992	Q	I	6,923,129		Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
								2018	4000	5,430,500	2017	4000	5,430,500	2016	4022	3,942,500
								2018	4000	620,800	2017	4000	620,800	2016	4022	391,900
								2018	4000	193,000	2017	4000	193,000			
<b>Total:</b>									<b>6,244,300</b>			<b>6,244,300</b>			<b>4,334,400</b>	

EXEMPTIONS				OTHER ASSESSMENTS				This signature acknowledges a visit by a Data Collector or Assessor				
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.				
<i>Total:</i>												

ASSESSING NEIGHBORHOOD					APPRAISED VALUE SUMMARY				
NBHD/ SUB	NBHD Name	Street Index Name	Tracing	Batch					
0001/A					Appraised Bldg. Value (Card)				5,180,900
					Appraised XF (B) Value (Bldg)				249,600
					Appraised OB (L) Value (Bldg)				193,000
					Appraised Land Value (Bldg)				620,800
					Special Land Value				0
					Total Appraised Parcel Value				6,244,300
					Valuation Method:				C
					Exemptions				0
					Adjustment:				0
					<b>Net Total Appraised Parcel Value</b>				<b>6,244,300</b>

NOTES									
A/C ONLY IN OFFICE AREA=FRONT 90X202AREA									
LOTS 9,10,11									
PB 144/35									
I/17 EXT+INT=AVG DBA' LL BEAN									
MANUFACTURING PLANT 2BTHS=MENS+WOMENS									
LOCKER ROOM W/ SHOWERS+CHANGING AREAS									

BUILDING PERMIT RECORD								VISIT/ CHANGE HISTORY							
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result	
P9985	03/06/2017	PL	Plumbing	0		100	03/06/2017	WATER HEATER & SO	01/10/2017			DR	00	Measur+Listed	
B15003	01/12/2015	CM	Commercial	70,000		100	04/01/2015	RENOVATIONS							
E15005	01/12/2015	EL	Electric	0		100	01/12/2015	ELECTR FOR RENOVA							
P9283	02/20/2014	PL	Plumbing	0		100	02/20/2014	PLUMB PERMIT							
F	01/10/2008	FD	Fire Dept Perm	0		100		FIRE DETECTION							

LAND LINE VALUATION SECTION																					
B #	Use Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	I. Factor	S.A.	Acre Disc	C. Factor	ST. Idx	Adj.	Notes- Adj	Special Pricing	S Adj Fact	Adj. Unit Price	Land Value		
1	4000	Factory					7.50	AC	100,000.00	0.9167	1	1.0000	1.00	301	0.85			1.00	584,400		
1	4000	Factory					8.56	AC	5,000.00	1.0000	0	1.0000	1.00	301	0.85			1.00	36,400		
<b>Total Card Land Units:</b>							<b>16.06</b>	<b>AC</b>	<b>Parcel Total Land Area:</b>				<b>16.06 AC</b>	<b>Total Land Value:</b>							<b>620,800</b>



CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT			
L L BEAN INC						Description	Code	Appraised Value	Assessed Value
1 CASCO ST									
FREEPORT, ME 04033									
Additional Owners:		<b>SUPPLEMENTAL DATA</b>							
		Other ID: 017-050-000-001		ASSOC PID#					
GIS ID:						Total		6,244,300	6,244,300

3203  
BRUNSWICK, ME

**VISION**

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
								Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
								Total:			Total:			Total:		

EXEMPTIONS			OTHER ASSESSMENTS					
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.
Total:								

*This signature acknowledges a visit by a Data Collector or Assessor*

APPRAISED VALUE SUMMARY	
Appraised Bldg. Value (Card)	5,180,900
Appraised XF (B) Value (Bldg)	249,600
Appraised OB (L) Value (Bldg)	193,000
Appraised Land Value (Bldg)	620,800
Special Land Value	0
Total Appraised Parcel Value	6,244,300
Valuation Method:	C
Exemptions	0
Adjustment:	0
<b>Net Total Appraised Parcel Value</b>	<b>6,244,300</b>

ASSESSING NEIGHBORHOOD				
NBHD/SUB	NBHD Name	Street Index Name	Tracing	Batch
0001/A				

NOTES									

BUILDING PERMIT RECORD								VISIT/ CHANGE HISTORY						
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result

LAND LINE VALUATION SECTION																		
B #	Use Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	I. Factor	S.A.	C. Factor	ST. Idx	Adj.	Notes- Adj	Special Pricing	S Adj Fact	Adj. Unit Price	Land Value



# Manufacturing (140)

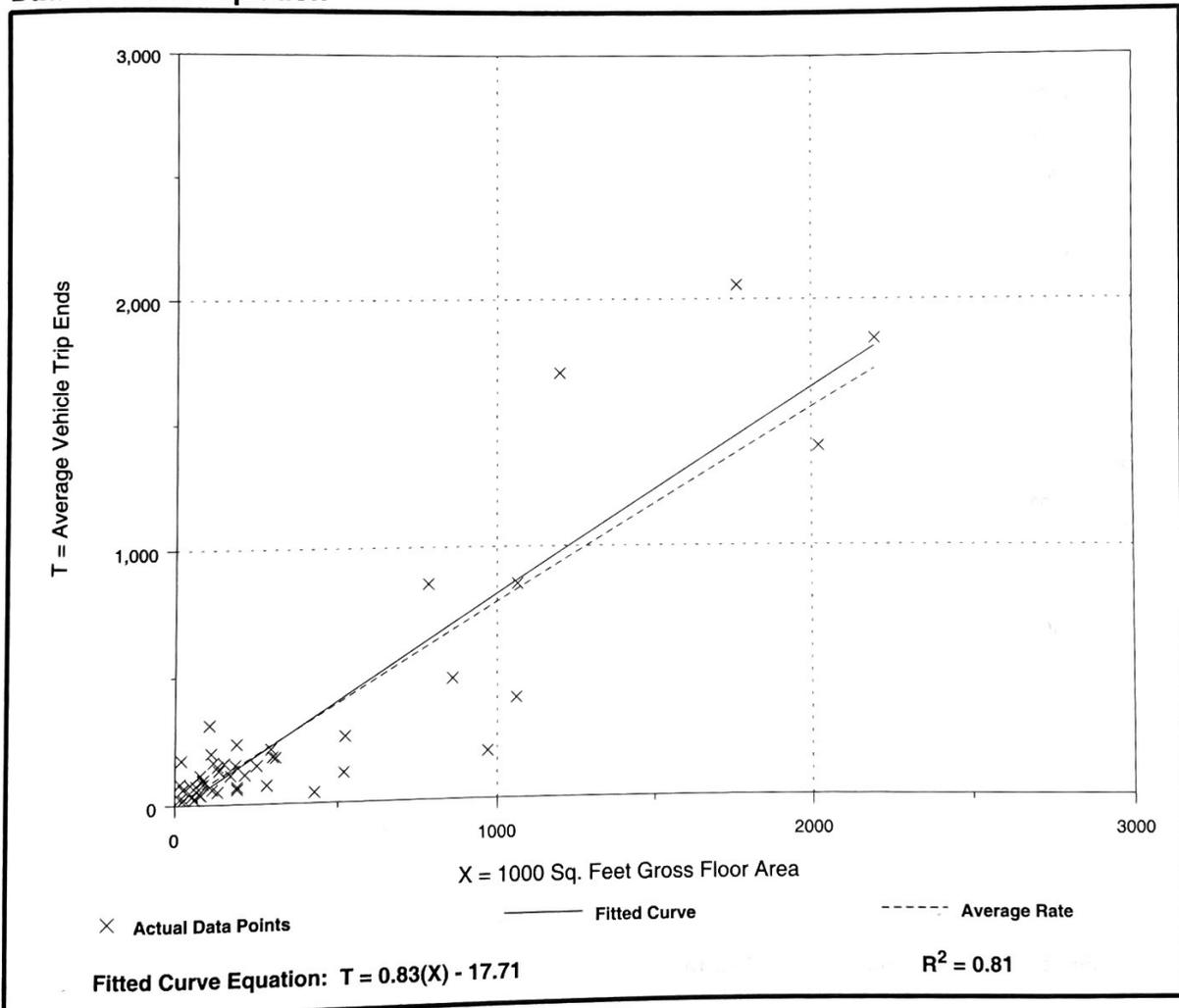
**Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area**  
**On a: Weekday,**  
**A.M. Peak Hour of Generator**

Number of Studies: 50  
 Average 1000 Sq. Feet GFA: 370  
 Directional Distribution: 68% entering, 32% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.78	0.10 - 8.75	1.01

### Data Plot and Equation



# Manufacturing (140)

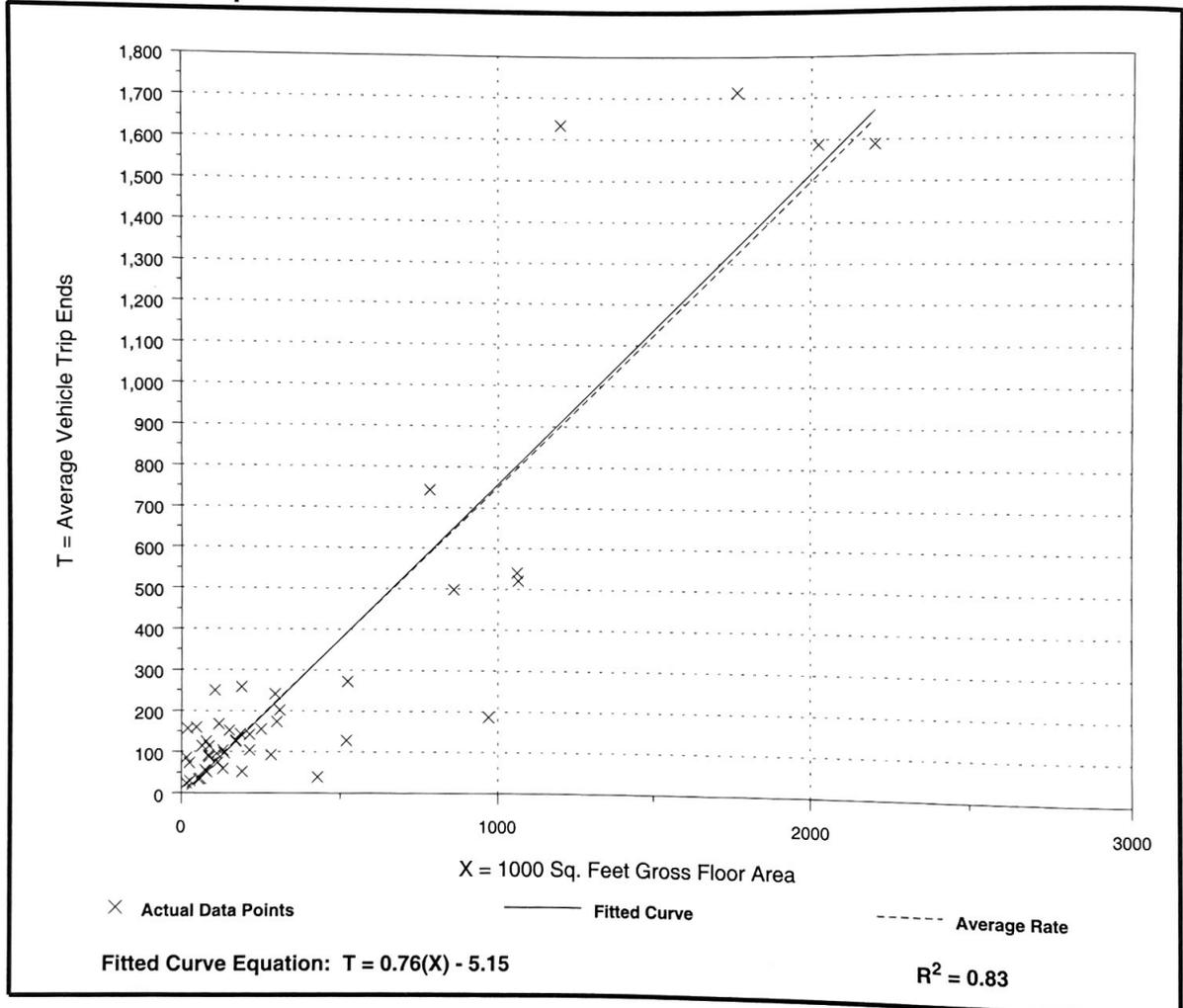
**Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area**  
**On a: Weekday,**  
**P.M. Peak Hour of Generator**

Number of Studies: 50  
 Average 1000 Sq. Feet GFA: 370  
 Directional Distribution: 52% entering, 48% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.75	0.09 - 7.85	0.98

### Data Plot and Equation



# Manufacturing (140)

Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area  
On a: Saturday,  
Peak Hour of Generator

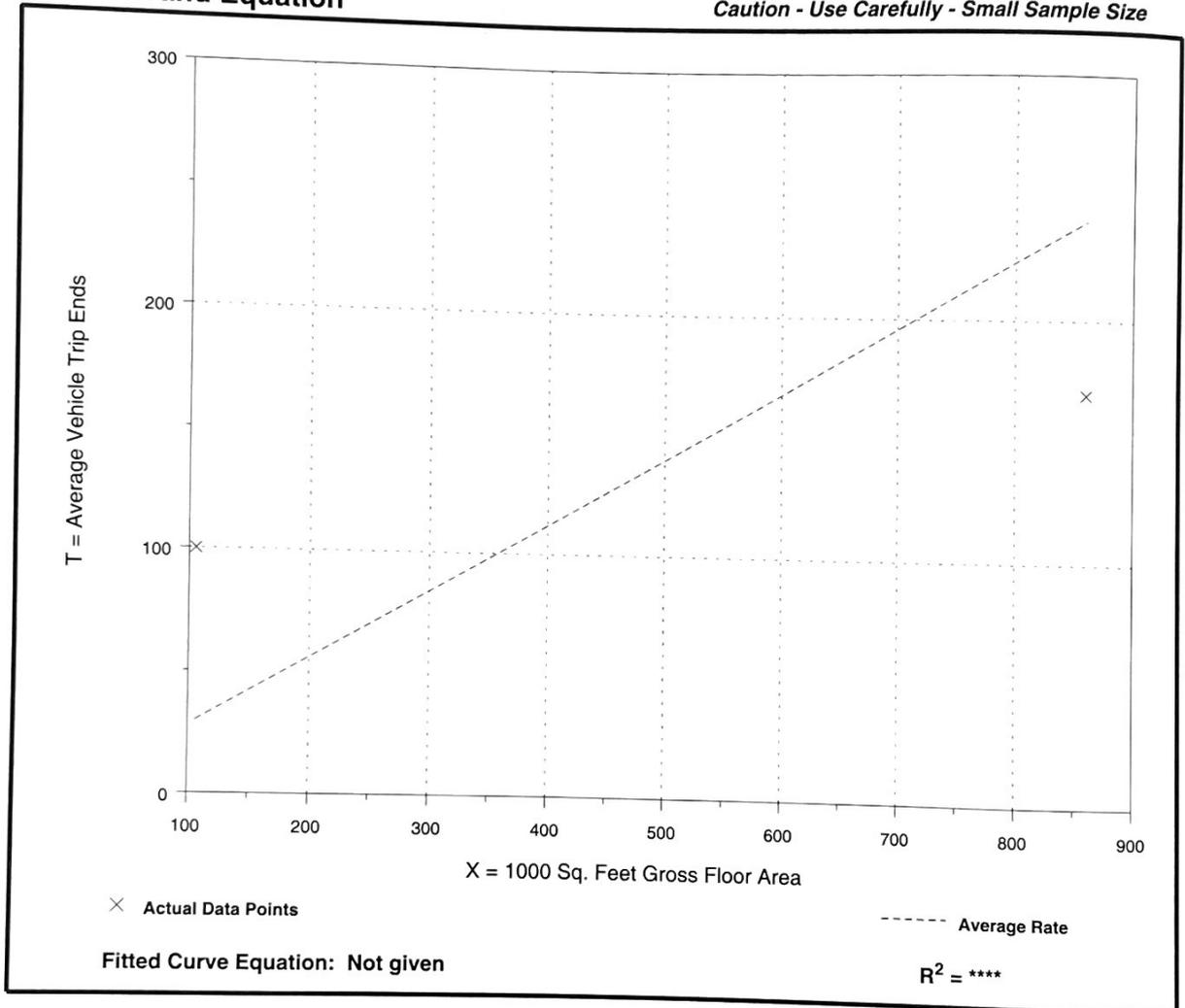
Number of Studies: 2  
Average 1000 Sq. Feet GFA: 483  
Directional Distribution: Not available

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.28	0.20 - 0.94	*

### Data Plot and Equation

*Caution - Use Carefully - Small Sample Size*



CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT			
TBW LLC						Description	Code	Appraised Value	Assessed Value
PO BOX 216						COMMERC.	3260	308,500	308,500
FREEPORT, ME 04078						COM LAND	3260	256,700	256,700
Additional Owners:						COMMERC.	3260	54,000	54,000
<b>SUPPLEMENTAL DATA</b>									
Other ID: 040-223-000-001		Park ID							
Type 3		# Of Units							
Use 61		File TG Date							
Special Cond		Status							
Mobile Home		Subdivision BRUNS LNDG PH1 LT171							
Moho Serial		ASSOC PID#							
GIS ID: Y					Total			619,200	619,200

3203  
BRUNSWICK, ME

**VISION**

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
TBW LLC		33262/ 320	07/08/2016	U	I	400,000	1E	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
								2018	3260	308,500						
								2018	3260	256,700						
								2018	3260	54,000						
								Total:		619,200	Total:			Total:		

EXEMPTIONS				OTHER ASSESSMENTS				APPRAISED VALUE SUMMARY				
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.	This signature acknowledges a visit by a Data Collector or Assessor			
Total:												

ASSESSING NEIGHBORHOOD				
NBHD/SUB	NBHD Name	Street Index Name	Tracing	Batch
0001/A				

NOTES				
DBA FLIGHT DECK BREWING				
PORTION OF PARCEL & 1/3 PARKING				
LEASED TO REAL SCHOOL (BRUNSWICK SCHOOL DEPT)				
SEE 040-223-002 FOR EXEMPT PORTION				

BUILDING PERMIT RECORD										VISIT/ CHANGE HISTORY					
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result	
E170243	08/28/2017	EL	Electric	0		100		4 CHARGING STATION	07/11/2017			PS	00	Measur+Listed	
E170227	08/14/2017	EL	Electric	0		100		SOLAR PANEL INSTAL	05/11/2017			PS	00	Measur+Listed	
P9954	01/24/2017	PL	Plumbing	0		100	01/24/2017	PLUMB FOR RENOVAT	05/04/2017			PS	20	Permit Check Listed	
B170013	01/19/2017	RE	Remodel	0		100	01/19/2017	CHANGE OF USE	03/15/2012			DG	00	Measur+Listed	
E16363	11/14/2016	EL	Electric	0		100	11/14/2016	ELECTR FOR ADDITIO							
B16426	11/14/2016	AD	Addition	250,000		100		1127 SF ADDITION & R							
B16113	10/25/2016	SG	Sign/PersProp	0		100	10/25/2016	SIGN - FLIGHT DECK F							

LAND LINE VALUATION SECTION																			
B #	Use Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	I. Factor	S.A.	Acre Disc	C. Factor	ST. Idx	Adj.	Notes-Adj	Special Pricing	S Adj Fact	Adj. Unit Price	Land Value
1	3260	Rest/Clubs					2.00	AC	100,000.00	0.9800	1	1.0000						1.00	245,000
1	3260	Rest/Clubs					1.87	AC	5,000.00	1.0000	0	1.0000			EXCESS			1.00	11,700
1	3260	Rest/Clubs					1.60	AC	0.00	1.0000	0	1.0000			LEASED TO REAL SC			.00	0



## Land Use: 936 Drinking Place

### Description

A drinking place contains a bar where alcoholic beverages and snacks are served and possibly some type of entertainment such as music, television screens, video games, or pool tables.

### Additional Data

The sites were surveyed in 1987, 1995 and 1997 in Colorado, Oregon and South Dakota.

### Source Numbers

291, 358, 583

## Drinking Place (936)

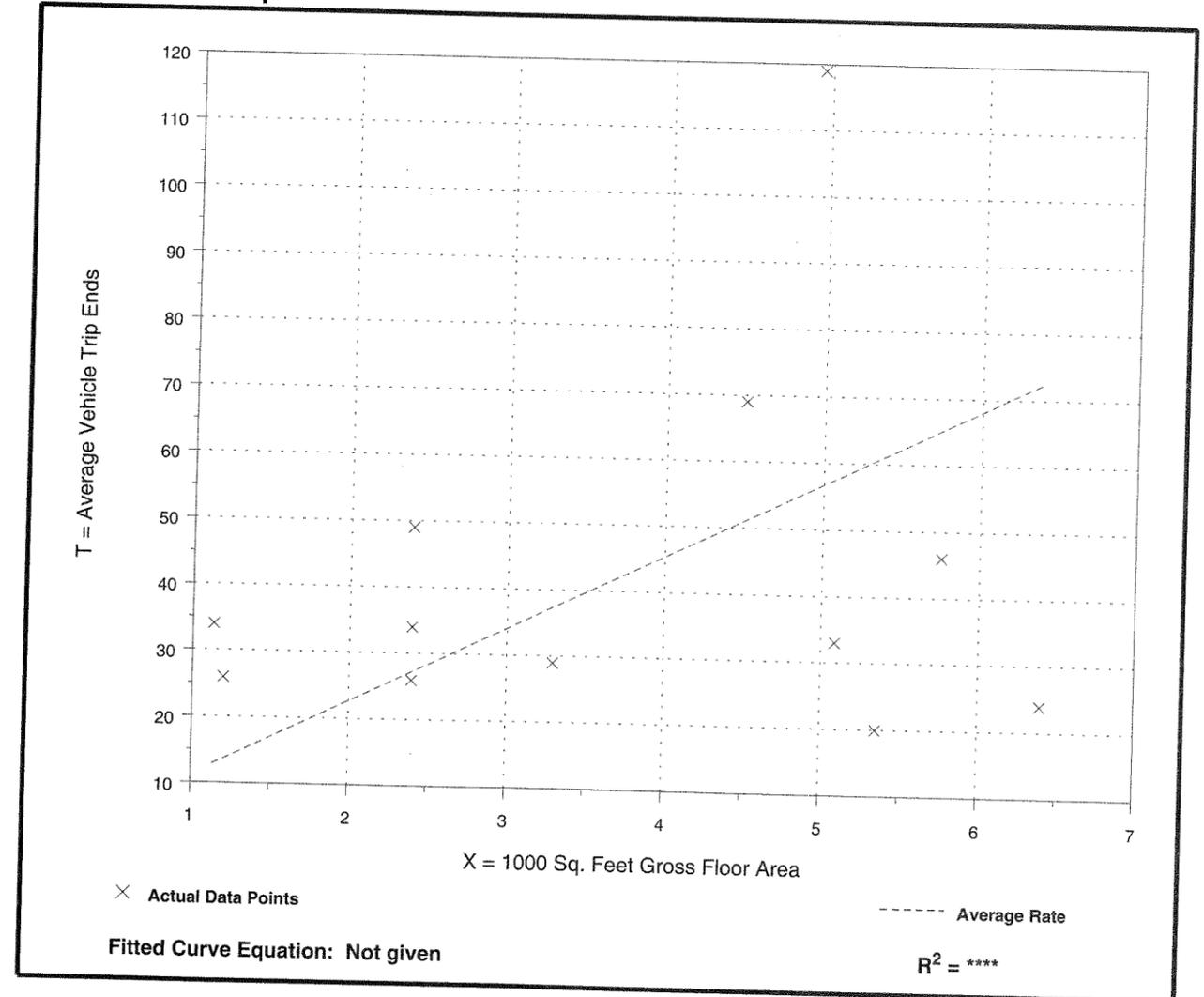
Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area  
On a: Weekday,  
Peak Hour of Adjacent Street Traffic,  
One Hour Between 4 and 6 p.m.

Number of Studies: 12  
Average 1000 Sq. Feet GFA: 4  
Directional Distribution: 66% entering, 34% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
11.34	3.73 - 29.98	8.04

### Data Plot and Equation



## Drinking Place (936)

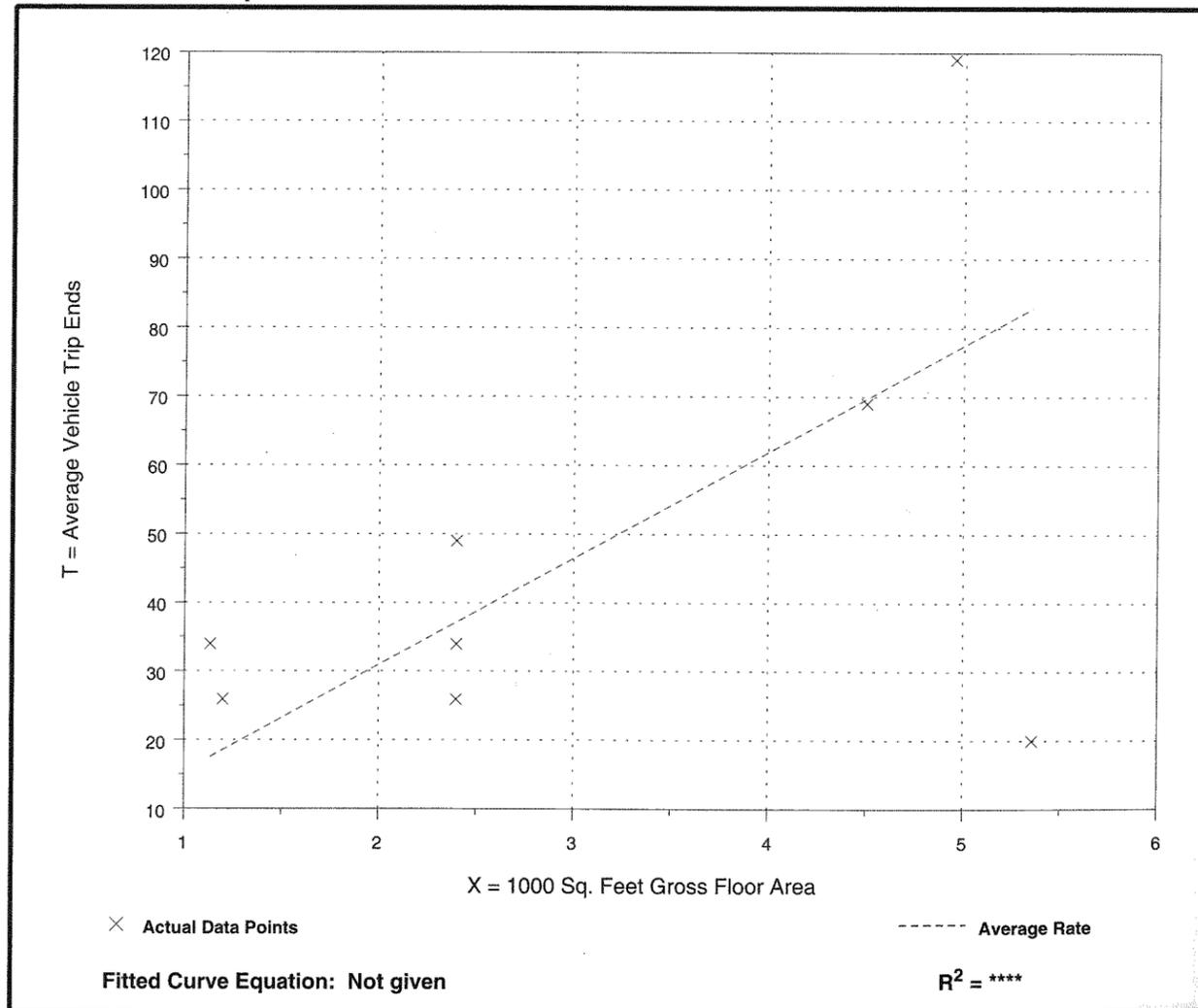
Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area  
On a: Weekday,  
P.M. Peak Hour of Generator

Number of Studies: 8  
Average 1000 Sq. Feet GFA: 3  
Directional Distribution: 68% entering, 32% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
15.49	3.73 - 29.98	8.63

### Data Plot and Equation



## Land Use: 941 Quick Lubrication Vehicle Shop

### Description

A quick lubrication vehicle shop is a business where the primary activity is to perform oil change services for vehicles. Other ancillary services provided may include preventative maintenance, such as fluid and filter changes. Automobile repair service is generally not provided. Automobile care center (Land Use 942) and automobile parts and service center (Land Use 943) are related uses.

### Additional Data

The independent variable servicing position is defined as the maximum number of vehicles that can be serviced simultaneously.

The sites were surveyed in the 1990s in California and Washington.

### Source Numbers

362, 441

CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT				
5 INDUSTRIAL PARKWAY LLC						Description	Code	Appraised Value	Assessed Value	3203 BRUNSWICK, ME
C/O COMMERCIAL PROPERTIES MG!						COMMERC.	3400	1,896,200	1,896,200	
P O BOX 66749						COM LAND	3400	253,900	253,900	
FALMOUTH, ME 04105						COMMERC.	3400	155,900	155,900	<b>VISION</b>
Additional Owners:						<b>SUPPLEMENTAL DATA</b>				
Other ID:		017-043-000-000		Park ID						
Type		3		# Of Units						
Use		61		File TG Date						
Special Cond				Status						
Mobile Home				Subdivision						
Moho Serial				ASSOC PID#						
GIS ID:						Total		2,306,000	2,306,000	

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
5 INDUSTRIAL PARKWAY LLC		25500/ 330	09/24/2007	Q	I	1,900,000	00	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
MBNA PROPERTIES INC		11947/ 91	06/01/1995			120,000		2018	3400	1,896,200	2017	3400	1,896,200	2016	3222	1,825,100
								2018	3400	253,900	2017	3400	253,900	2016	3222	159,000
								2018	3400	155,900	2017	3400	155,900			
								Total:		2,306,000	Total:		2,306,000	Total:		1,984,100

EXEMPTIONS				OTHER ASSESSMENTS				
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.
Total:								

This signature acknowledges a visit by a Data Collector or Assessor

ASSESSING NEIGHBORHOOD				
NBHD/ SUB	NBHD Name	Street Index Name	Tracing	Batch
0001/A				

APPRAISED VALUE SUMMARY	
Appraised Bldg. Value (Card)	1,873,600
Appraised XF (B) Value (Bldg)	22,600
Appraised OB (L) Value (Bldg)	155,900
Appraised Land Value (Bldg)	253,900
Special Land Value	0
Total Appraised Parcel Value	2,306,000
Valuation Method:	C
Exemptions	0
Adjustment:	0
<b>Net Total Appraised Parcel Value</b>	<b>2,306,000</b>

**NOTES**  
 2009-ADD C/O & C ADDRESS PER LTR IN CORR  
 2009-C ADDRESS PER OWNR CALLING 10/8/09  
 DO NOT CHANGE ADDRESS UNLESS OWNER REQ.  
 I/17 EXT+INT=AVG CONFIRMED INT INFO W/ M  
 ANAGER=UNABLE TO DO INT INSPACE. DBA;  
 BANK OF AMAERICA CALL CENTER

LOT 3 PB 144/35

BUILDING PERMIT RECORD									VISIT/ CHANGE HISTORY					
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result
									01/10/2017			DR	00	Measur+Listed

LAND LINE VALUATION SECTION																			
B #	Use Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	I. Factor	S.A.	Acre Disc	C. Factor	ST. Idx	Adj.	Notes- Adj	Special Pricing	S Adj Fact	Adj. Unit Price	Land Value
1	3400	Office Building					3.00	AC	100,000.00	0.9633	1	1.0000	1.00	301	0.85			1.00	245,600
1	3400	Office Building					1.96	AC	5,000.00	1.0000	0	1.0000	1.00	301	0.85			1.00	8,300

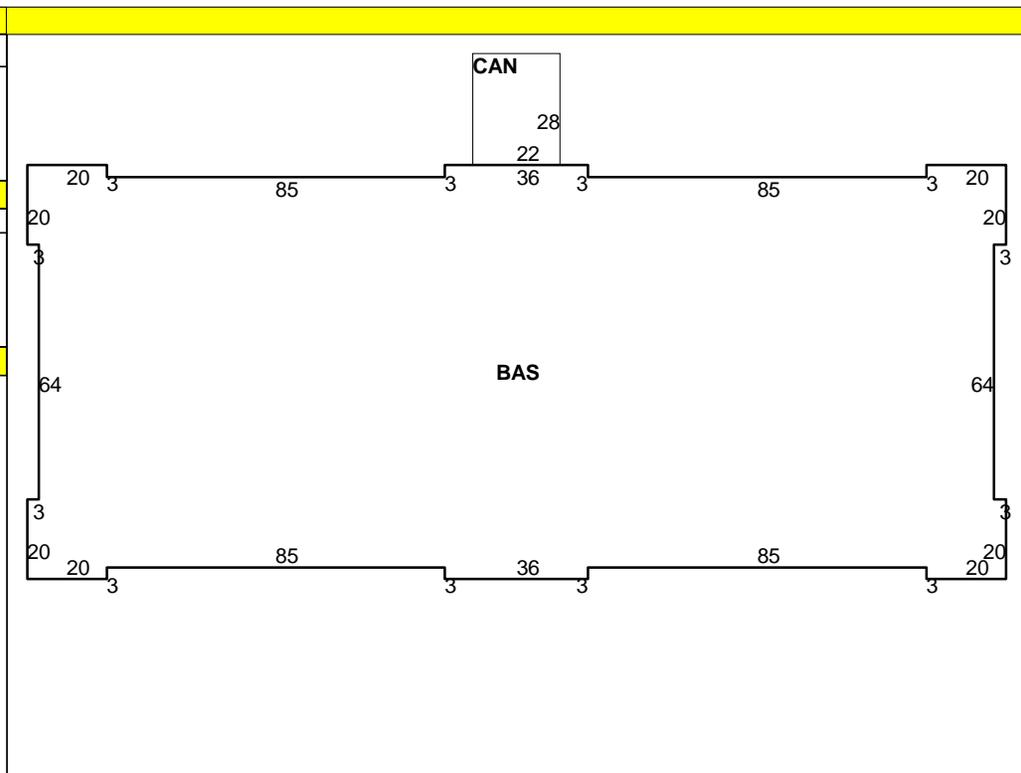
CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)			
Element	Cd.	Ch.	Description	Element	Cd.	Ch.	Description
Style	18		Office Bldg				
Model	94		Commercial				
Grade	04		Average +10				
Stories	1						
Occupancy	1						
Exterior Wall 1	19		Brick Veneer				
Exterior Wall 2	28		Glass/Thermo.				
Roof Structure	03		Gable/Hip				
Roof Cover	11		Slate				
Interior Wall 1	05		Drywall/Sheet				
Interior Wall 2							
Interior Floor 1	14		Carpet				
Interior Floor 2	05		Vinyl/Asphalt				
Heating Fuel	02		Oil/Gas				
Heating Type	04		Forced Air-Duc				
AC Type	03		Central				
Bldg Use	3400		Office Building				
Total Rooms							
Total Bedrms							
Total Baths	1						
Heat/AC	01		HEAT/AC PKGS				
Frame Type	02		WOOD FRAME				
Baths/Plumbing	02		AVERAGE				
Ceiling/Wall	06		CEIL & WALLS				
Rooms/Prtns	02		AVERAGE				
Wall Height	12						
% Comm Wall							
				<b>MIXED USE</b>			
				Code	Description		Percentage
				3400	Office Building		100
				<b>COST/MARKET VALUATION</b>			
				Adj. Base Rate:		107.07	
				Replace Cost		2,602,219	
				AYB		1995	
				Dep Code		G	
				Remodel Rating			
				Year Remodeled			
				Dep %		28	
				Functional Obslnc			
				External Obslnc			
				Cost Trend Factor			
				Condition			
				% Complete			
				Overall % Cond		72	
				Apprais Val		1,873,600	
				Dep % Ovr		0	
				Dep Ovr Comment			
				Misc Imp Ovr		0	
				Misc Imp Ovr Comment			
				Cost to Cure Ovr		0	
				Cost to Cure Ovr Comment			

**OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)**

Code	Description	Sub	Sub Descript	L/B	Units	Unit Price	Yr	Gde	Dp Rt	Cnd	%Cnd	Apr Value
PAV1	PAVING-ASPH			L	110.00	2.00	2016			A	50	110,000
SHD1	SHED AVG			L	504	13.00	2016			A	50	3,300
SHD2	SHED GOOD			L	192	20.00	2016			G	75	2,900
LT5	MERC VAP SH			L	21	1,300.00	2017			G	75	20,500
LT10	HIGH PRE SOL			L	8	3,200.00	2017			G	75	19,200
SPR1	SPRINKLERS-			B	24,180	1.30	2003		2		100	22,600

**BUILDING SUB-AREA SUMMARY SECTION**

Code	Description	Living Area	Gross Area	Eff. Area	Unit Cost	Undeprec. Value
BAS	First Floor	24,180	24,180	24,180	107.07	2,589,049
CAN	Canopy	0	616	123	21.38	13,170
<b>Ttl. Gross Liv/Lease Area:</b>		<b>24,180</b>	<b>24,796</b>	<b>24,303</b>		<b>2,602,219</b>



# General Office Building (710)

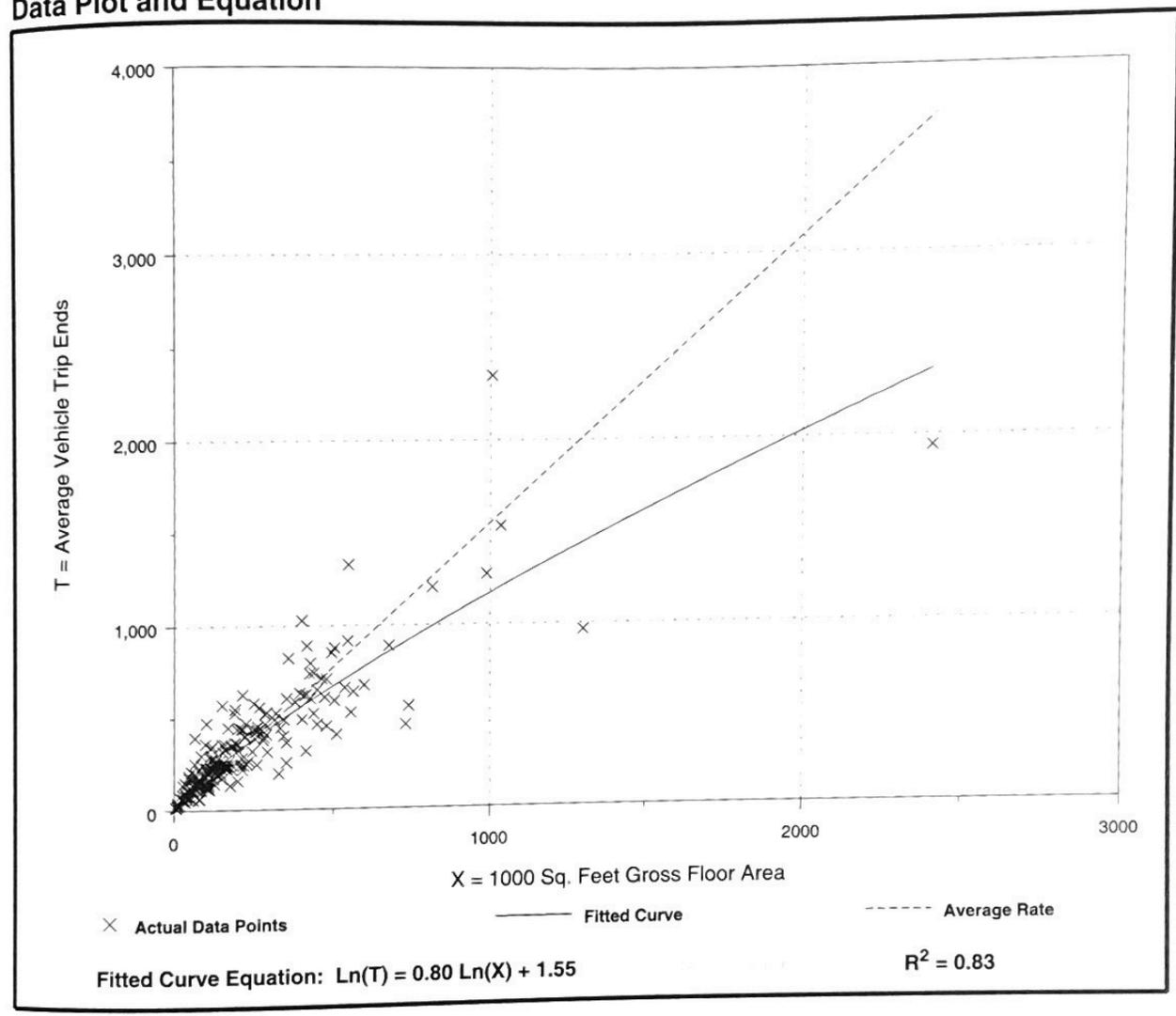
Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area  
On a: Weekday,  
A.M. Peak Hour

Number of Studies: 217  
Average 1000 Sq. Feet GFA: 223  
Directional Distribution: 88% entering, 12% exiting

## Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
1.55	0.60 - 5.98	1.39

## Data Plot and Equation



# General Office Building (710)

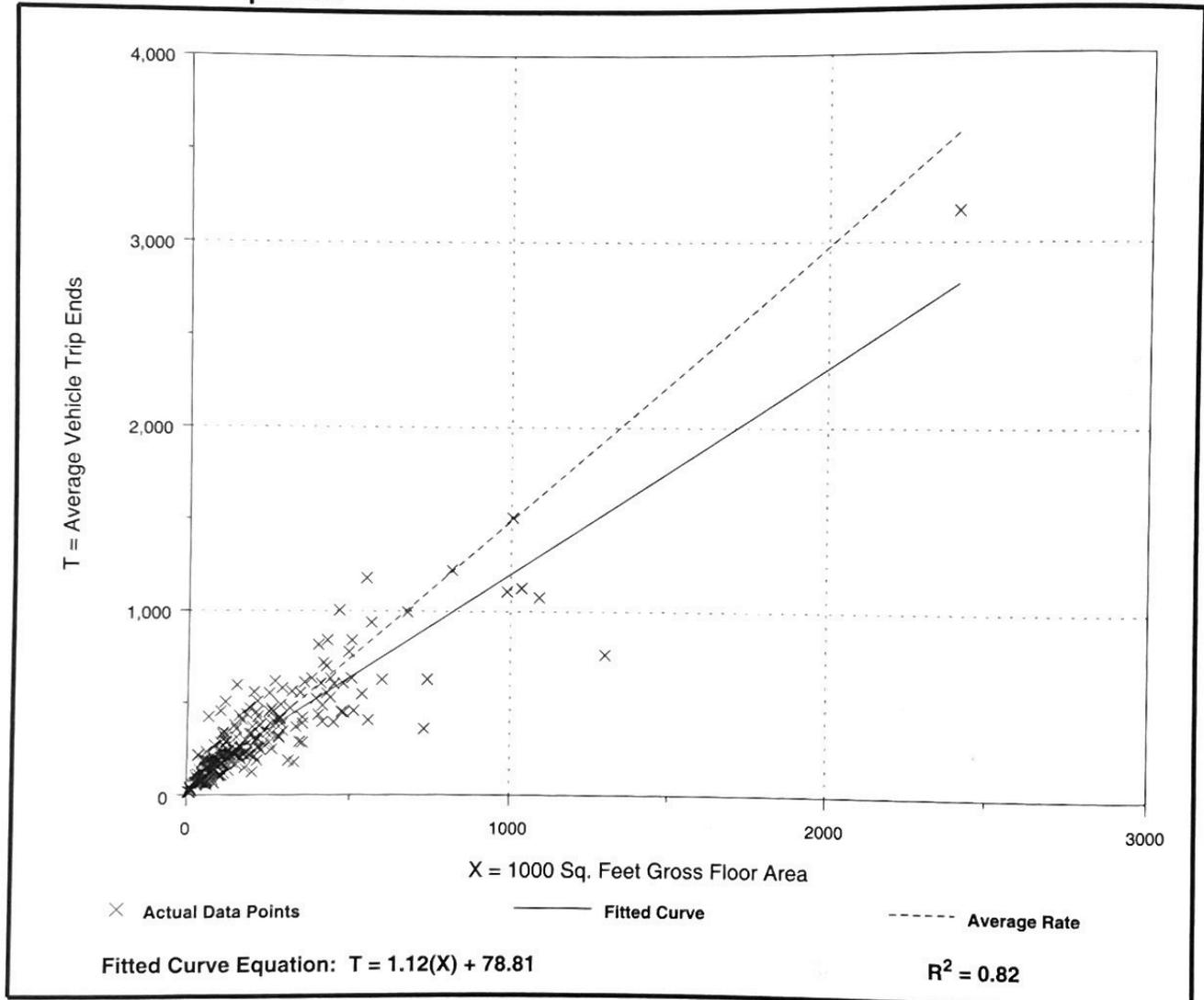
**Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area**  
**On a: Weekday,**  
**P.M. Peak Hour**

Number of Studies: 235  
 Average 1000 Sq. Feet GFA: 216  
 Directional Distribution: 17% entering, 83% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
1.49	0.49 - 6.39	1.37

### Data Plot and Equation



# General Office Building (710)

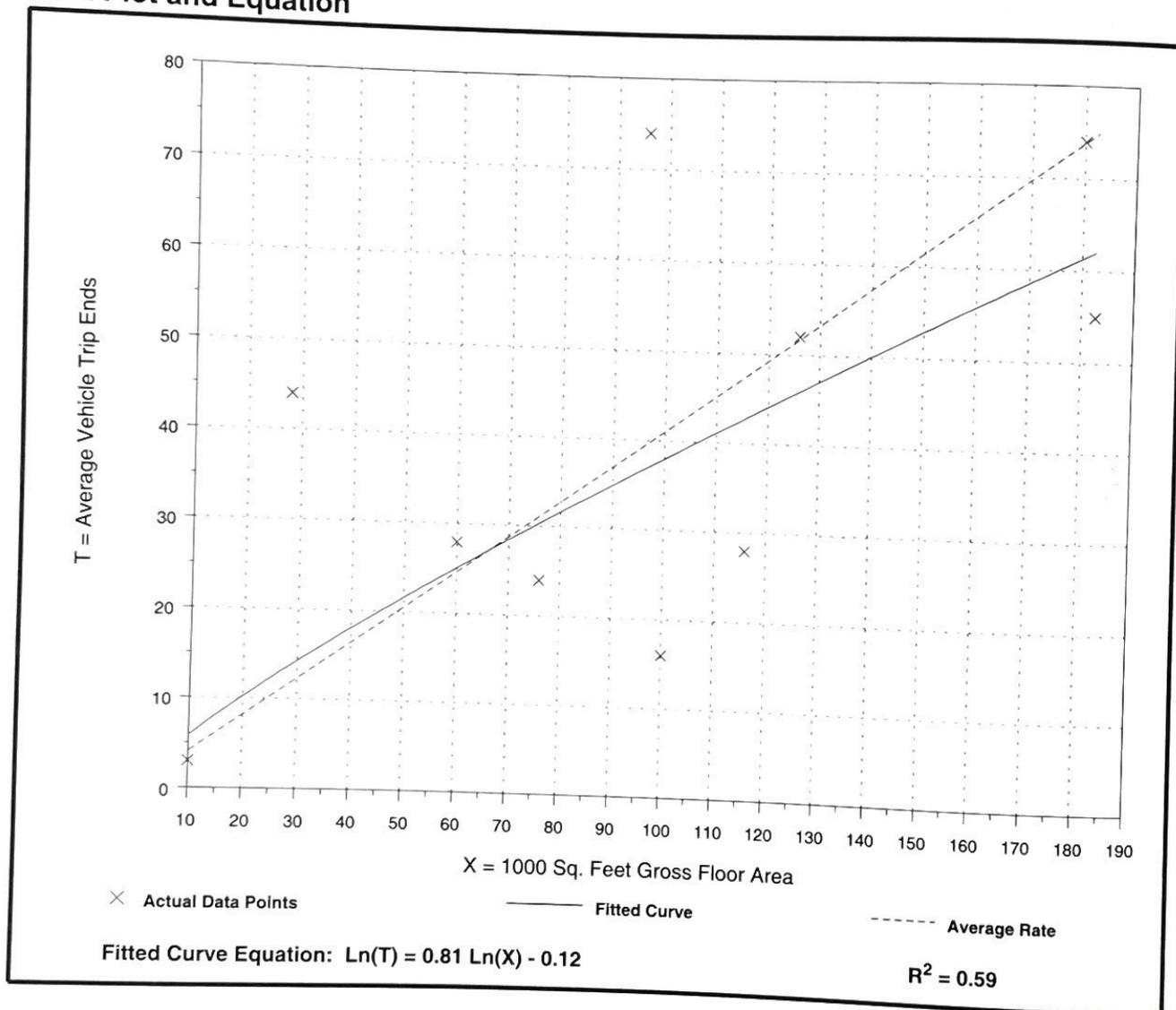
**Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area**  
**On a: Saturday,**  
**Peak Hour of Generator**

Number of Studies: 10  
 Average 1000 Sq. Feet GFA: 97  
 Directional Distribution: 54% entering, 46% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.41	0.16 - 1.57	0.68

### Data Plot and Equation



# General Office Building (710)

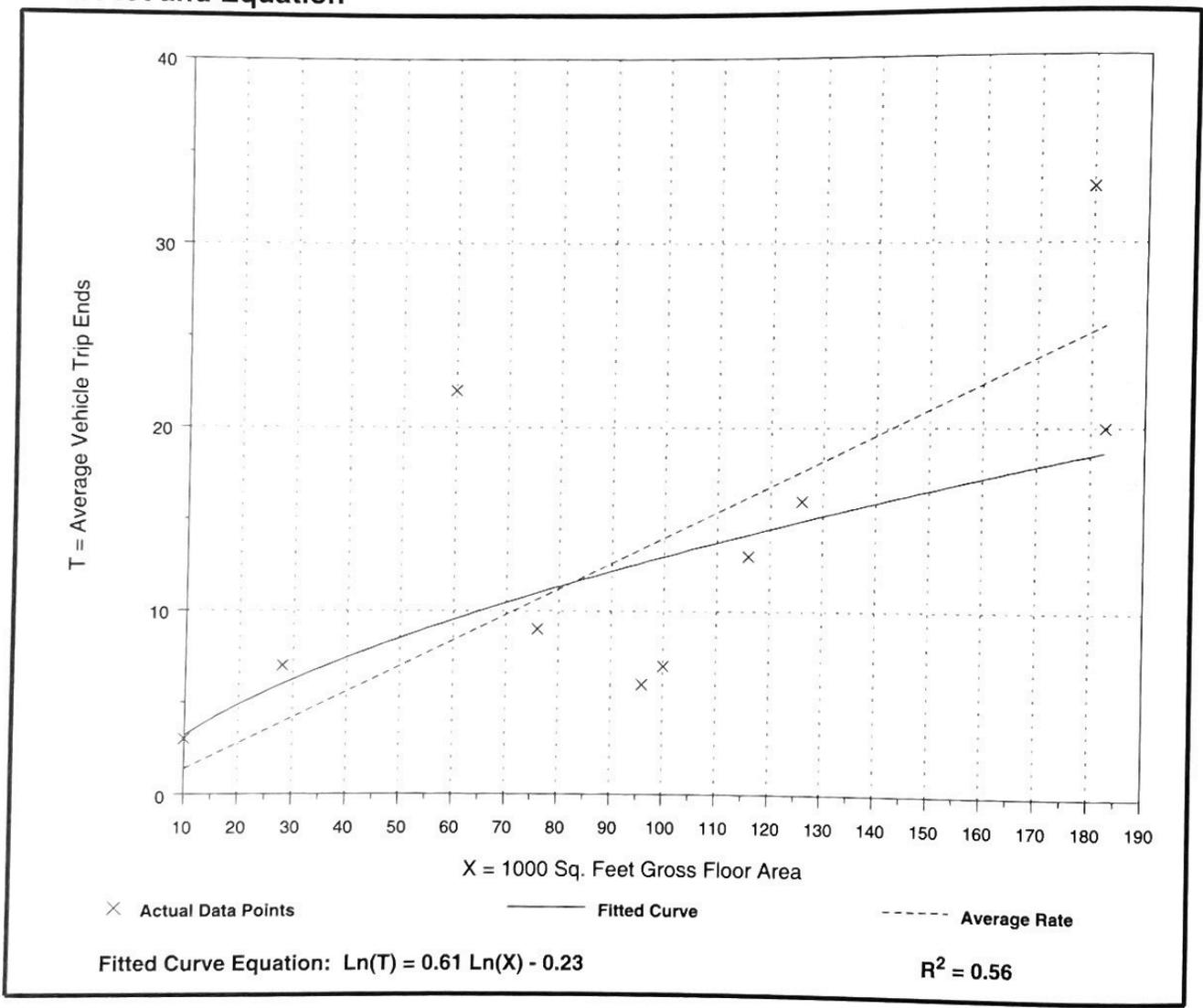
**Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area**  
**On a: Sunday,**  
**Peak Hour of Generator**

Number of Studies: 10  
 Average 1000 Sq. Feet GFA: 97  
 Directional Distribution: 58% entering, 42% exiting

### Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.14	0.06 - 0.37	0.38

### Data Plot and Equation





Jared Woolston, Town Planner  
Town of Brunswick  
85 Union Street  
Brunswick, Maine 04011

Dear Mr. Woolston,

I am the President of Guardian Pharmacy of Maine, located at 3 Business Parkway, Suite 2, which is directly across the street from the proposed retail marijuana store. Guardian Pharmacy of Maine is opposed to the Conditional Use Application of GJoris, LLC and asks that the application be denied.

Guardian Pharmacy of Maine is a "closed shop" pharmacy that services Long Term Care facilities and other congregate housing customer's pharmacy needs from this location. We do not service "walk in traffic" but rather employ delivery staff to bring these specialty-packaged prescription to our customers throughout Maine and Southern New Hampshire daily in our own fleet of unmarked delivery vehicles. We also provide clinical pharmacy services to these customers on site (and more recently remotely) from our Business Parkway location. In addition we provide 24/7 emergency services for Hospice Patients within these communities and as such are potentially working on site 24 hours a day 7 days a week.

Guardian Pharmacy of Maine (formerly Waltz Long Term Care) relocated to this location in 2012 from a location in Topsham that no longer met our needs and we felt put our operation at risk from a safety and security standpoint. The industrial park location at 3 Business Parkway suited our space needs as well as provided a discrete and thus safer location from which we could expand. The decision to relocate to the industrial park location was made in consultation with local DEA concerns regarding our more public location and the unnecessary exposure to possible theft or robbery. As I mentioned above, we are not open to the public and in such specifically chose to be located outside the traditional retail core of Brunswick or Topsham for the reasons I have outlined above.

In recent years we have had the establishment of two cannabis cultivation facilities as well as what I believe is a medical marijuana establishment near our location both which have unfortunately required contact with the town and local law enforcement regarding violation of odor ordinances. . There have been times when even the inside of our location has been subject to the overwhelming odor of cannabis that has caused employee complaints. Town officials have visited us upon request on at least three occasions to address these concerns. . There has also been an increase in transient traffic and suspected illegal activity in the industrial park in general due to existence of more than one vacant parking lot ( MBNA / Bank of America Building as well as the former Envisionet / BIW location that is now occupied by Independence Association).

There is also concern that this establishment will increase not only vehicular traffic but also unwanted foot traffic and loitering on the roadways and wooded areas in the industrial park.

Guardian Pharmacy of Maine, LLC  
3 Business Parkway Ste #2  
Brunswick, ME 04011  
Phone: 207-373-9077 • Fax: 207-373-9088



The claim that the establishment of a retail cannabis location with a “Regional Draw” will not create significantly more vehicular traffic by patrons, resident or suppliers .... Currently within 300 feet of the proposed use...” is false. Our staff of 63 FTE’s and our suppliers account for a significant portion of traffic on Industrial parkway. We currently operate in shift between 6 am and midnight as well returning delivery staff until three or four in the morning. In such we do not have more than 30 staff traveling to and from the building in any given day. We also operate Saturday and Sunday with a much smaller but similar schedule footprint. It should be noted that Business Parkway is a dead end side road off the main Industrial way, in such not designed to safely, and effectively handle the level of traffic being projected.

For these and many additional reasons that I would be more than happy to discuss we feel that this is not the appropriate location for a retail recreational cannabis store. There are many more appropriate (and might I mention even currently vacant) locations in Brunswick that would allow successful operation of this business with adequate visibility and parking already in place. The hope is that the Town of Brunswick will consider the concerns and needs of an already established business over the need “hide” the retail sale of cannabis in the industrial park. The risk to the safety, security of my operation and staff as well as the increase in cost to mitigate. (Additional lighting, security and even gating our parking lot) is inappropriate and unnecessary.

We respectfully ask that you deny the Conditional Use Application of GJoris, LLC.

Best Regards,

*Courtney D. Oland*

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