

**FOND DU LAC SOUTHWEST INDUSTRIAL PARK
PROTECTIVE COVENANTS**

1. General Purpose.

The purpose of these protective covenants is to insure proper use, development and maintenance of each parcel within the industrial park; to preserve the value of each parcel within the industrial park as well as all land located within the vicinity; to protect the environment; to guard against the erection of improper, unsuitable structures and uses; to insure protection from incompatibility and unsightliness; to protect the health and safety of the general public; and to attract quality, image-conscious companies to the industrial park.

2. General.

- A. Each lot shall contain a minimum frontage of 250 feet on each public street.
- B. The division of any lot, area or tract of land within the industrial park for any purpose, whether immediate or future for conveyance, transfer, improvement or sale shall not result in the creation of any parcel of less than 4 acres in size. No division of land or lot line adjustment shall occur without the prior approval of the City Council of the City of Fond du Lac.
- C. On-street parking and loading is not permitted. All parking must be accommodated on the individual lots within the industrial park.
- D. Nothing contained herein shall nullify any of the requirements of federal, state or city laws, regulations or ordinances, except that in instances where applicable laws, regulations or ordinances and these protective covenants conflict, the more restrictive shall apply.

3. Land Use.

- A. The only permitted uses are:
 - (1) Manufacturing, assembly, fabricating, compounding, processing or packaging of goods, materials and products, except for those uses listed in Section B below.
 - (2) Research, development and testing laboratories and facilities.
 - (3) Wholesaling, warehousing and distribution activities.
 - (4) Office operations only if they are an integral part of and accessory to a permitted use.
 - (5) Retail sale of products manufactured on site and clearly an accessory use to the primary use of the site.
- B. Exceptions from permitted uses in Section A:
 - (1) Uses which would cause a nuisance per Section 16.
 - (2) Outdoor storage yards as a primary use.

- (3) Mini-warehouses or similar storage facilities for non-business uses.
- (4) Gasoline, oil or other fuel production or distribution operations.
- (5) Ammunition, ordnance or explosives production, distribution or storage operations.
- (6) Insecticide or pesticide production, distribution, or storage, except for rodent or insect control on site.
- (7) Asphalt or concrete batching or ready-mix plants.
- (8) Glue or acid manufacture or distribution operations.
- (9) Cement, lime or gypsum or related manufacturing operations.
- (10) Plating operations.
- (11) Junk yards, salvage yards.
- (12) Contractor yards and shops.

Interpretation of Permitted and Prohibited Uses

In cases where it is unclear as to whether a particular proposed use is a permitted use, a positive interpretation shall first be made by the City Plan Commission before said use may be permitted.

4. Submission of Plans.

No building, improvement, or use shall be erected, placed, or altered on any lot in the industrial park until the site plan has been approved by the City of Fond du Lac and the building plans have been approved by the Chief Building Inspector. Site plans shall be prepared and reviewed in accordance with Section 11.04 N, Site Plan Approval, of the City of Fond du Lac Zoning Ordinance, as may be amended from time to time, and with these protective covenants.

5. Construction Materials and Appearance.

- A. At least 25 percent of the front of all buildings—that is, the side facing the street on which the building is deemed to front—shall be faced with concrete, brick, masonry or stone. Said facing shall extend across the full front of the building. All other sides of any building shall be finished in an attractive manner in keeping with the state of the art for industrial buildings, but need not be finished in a like manner as that portion of the building referred to as the front. On corner lots, both sides of the building facing the streets shall be faced as described above. It is the intent of these provisions that all structures shall be designed and constructed in such a manner as to provide an aesthetically pleasing appearance and be harmonious with the overall development of the industrial park.
- B. All parking, driveway and storage areas shall be paved with hot-mixed asphalt or portland cement concrete. All walks shall be constructed of portland cement concrete.

- C. All drives, walks, storage and parking areas shall be completed prior to building occupancy, unless an extension not to exceed 12 months is granted in writing by the City.
- D. All buildings must be of approved construction in conformance with all applicable building codes.
- E. Yard hydrants or wall hydrants, where required by state or city codes, shall be required to be placed as directed by the City Fire Department at the owner's expense.

6. Building and Structure Height.

The maximum building and structure height including roof top equipment shall be 50 feet.

7. Minimum Setback and Other Yard Requirements.

A. Building Setbacks:

- (1) Front Yard. The building setback is the distance between the front lot line and the nearest wall of the building. Lots abutting Hickory Street shall have a building setback not less than 75 feet from the Hickory Street right-of-way line (e.g., the lot line). Lots that abut all other streets shall have a front yard building setback not less than 30 feet.
- (2) Side/Rear Yards: Side and rear yard building setbacks shall be as set forth in the City Zoning Ordinance, which may be amended from time to time.

B. Parking Setbacks:

The minimum front yard setback for parking of customer, visitor or employee vehicles is 30 feet. The front yard setback area shall be landscaped as set forth in Section 15. The minimum side/rear setbacks shall be not less than 5 feet. The parking of company vehicles, trucks and equipment shall be sited behind the extended line of the front building wall.

C. Fence Setbacks: The minimum front yard setback for any fence is 30 feet. See also Section 12 and Section 14.

8. Vision Triangle.

At all street intersections no obstruction of vision shall be erected, installed, planted, parked or otherwise placed on any lot between 3 and 8 feet above the grade of the sidewalk (or ground grade at the lot line) adjacent to such streets and within the vision triangle formed by street centerlines and a line connecting them at points 80 feet from the intersection of the street centerlines.

9. Utilities.

- A. The location of utility lines and easements shall be as shown on the City-approved site plan.
- B. All electric distribution lines (excluding lines of 15,000 volts or more), all telephone lines from which lots are individually served, and all television cable

lines installed within the industrial park shall be underground. Associated equipment and facilities which are appurtenant to underground electric and communications systems, such as but not limited to, substations, pad-mounted transformers, pad-mounted sectionalizing switches and above-grade pedestal-mounted boxes may be located above ground. Temporary overhead facilities may be installed to serve a construction site.

10. Drainage and Erosion Control.

- A. No land shall be developed and no use shall be permitted that result in the flooding, erosion, or sedimentation of adjacent properties or drainageways. Erosion control measures must be taken during and after construction. All runoff shall be properly channeled into a storm drain, watercourse, storage area, or other storm water management facility in conformance with the drainage portion of the City-approved site plan.
- B. All elements of the drainage control system shall be constructed and maintained in accordance with the City-approved site plan.
- C. All roof storm water must be collected internally and discharged less than 2 feet above grade at the building or be conducted underground directly to the drainage easement. Each Owner shall take the necessary precautions to ensure that storm drainage from their site is not contaminated with motor vehicle fuels and lubricants, scale or other chemical compounds that are detrimental to aquatic life.

11. Site Grading.

- A. The grading of individual lots and construction sites shall be the responsibility of the property owner.
- B. No topsoil or other excess soil shall be removed from any parcel without the prior written approval of the City Engineer. If the City Engineer determines that any or all of the topsoil or other excess soil may be needed by the City or any other property owner in the industrial park, said soil shall be stockpiled in such locations in the industrial park and in such a manner as directed by the City Engineer at no cost to the City or other property owner in the industrial park. If the City Engineer determines that any or all of the topsoil or other excess soil is not needed, the property owner shall have the responsibility for the removal of said soil from the industrial park.
- C. Utility easements shown on the City-approved site plan shall be graded to within 6 inches of final grade prior to the installation of underground electric and/or communications facilities. After such facilities have been installed, said final grade shall not be altered by more than 6 inches by the owner or by subsequent owners of the lots on which utility easements are located, except with written consent of the utility or utilities involved and the City Engineer.

12. Outdoor Storage.

- A. Outdoor storage areas shall be maintained in a neat and orderly manner, be located only to the rear of the building(s) as set forth in Section 7, and be effectively screened by opaque fencing which is a maximum of 10 feet in height.
- B. Outdoor storage shall not be located between the building line (extended) and the adjacent street.
- C. All trash containers, including dumpsters, must be enclosed by a wall of solid materials that match the building façade and provide an opaque visual screen. Such wall shall be maintained so as to present a good appearance at all times.
- D. Storage of wood or combustible materials, including pallets or skids, must be enclosed at least 20 feet from any structure, building or property line.
- E. Storage areas shall not be allowed in or across any utility or drainage easements, or the drainageways designated on each parcel's City-approved site plan.
- F. Storage of fuel oil or other bulk fluids or gases must be underground, unless written approval is obtained from the City, following a recommendation from the City Fire Chief, and State approval.
- G. Outdoor storage areas shall be maintained in an orderly, debris-free condition.

13. Signs.

- A. No signs other than product or company identification signs and directional signs shall be permitted on the described property.
- B. Corporate identity signs must be placed on a building façade or on a ground mounted panel. No roof mounted billboards will be permitted.
- C. All lettering on the building must be smaller in height than 10% of the wall height and all of the combined graphics shall not be longer than 25% of the wall length.
- D. Ground mounted corporate signs must be placed on panels with a solid base constructed of materials used on the visible elevations of the building (aluminum, glass, masonry or steel). The size of the panel and base shall not exceed 5 feet in height and 14 feet in length.
- E. Sign lighting, if desired, must be ground mounted hidden from view from the street. Individual letters may be internally illuminated.
- F. Directional signage shall be a post and panel system and shall be limited in size to 10 square feet and in height to 6 feet above the grade. Not more than one sign shall be provided at each access drive.

14. Fences.

- A. Fences shall not be permitted to be located in or across any utility easements or the drainageways designated on each parcel's City-approved site plan.
- B. The maximum height of any fence is 10 feet.
- C. Fences must be kept in good repair and condition.
- D. Fences used for screening purposes shall be opaque.

15. Landscaping.

- A. All areas on any site not used for building, storage, parking, walks, access roads, and loading areas shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas with groundcover, flowers, trees and shrubs. Landscape plans must be submitted as part of the required site plan for approval by the City prior to building construction. Shade trees shall have a minimum caliper of 2 inches.
- B. Natural or native planting including prairie and wetland plants will be permitted only upon approval of the City.
- C. At least one street tree of a species approved by the City Forester and of at least 2 inch caliper shall be planted within the terrace for each 75 feet of frontage on public streets. Tree species shall be in accordance with the City's approved street tree planting plan for the industrial park. Frontage along Hickory Street shall have one street tree of at least 2 inch caliper planted every 50 feet within the terrace areas. Streets trees shall be located so as to be a minimum of 15 feet from a street light, 10 feet from a fire hydrant, and 10 feet from a driveway.
- D. Required landscaping must be completed within 16 months of building occupancy.

16. Nuisance Control.

Any industrial or business activity must be performed or carried out in a manner that will not cause or produce a nuisance detrimental to adjacent sites. No operation, process, manufacturing activity, or building use in the industrial park shall produce or create noise, light, odors, smoke, dust, gas, vibration, heat, industrial waste, toxic matter, or other excessive measurable external nuisance to an extent greater than the following maximum allowable levels:

- A. Air Pollution. No person or activity shall emit any fly ash, dust, fumes, vapors, mists or gases in such quantities as to substantially contribute to exceeding established state or federal air pollution standards.
- B. Fire and Explosive Hazards. All activities involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazards of fire and explosion and with adequate fire-fighting and fire-suppression equipment and devices that are standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely

enclosed buildings which have incombustible exterior walls and an automatic fire-extinguishing system.

- C. Glare and Heat. No activity shall emit glare or heat that is visible or measurable outside its premises except activities which may emit indirect or sky-reflected glare which shall not be visible outside the industrial park. All operations producing intense glare or heat shall be conducted within a completely enclosed building. Exposed sources of light shall be shielded so as not to be visible outside their premises.
 - D. Water Quality Protection. No activity shall store or discharge, or permit the discharge of, any treated, untreated, or inadequately treated liquid, gaseous or solid materials of such nature, quantity obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as oil or scum; objectionable color, odor, taste; unsightliness; or be harmful to human, animal, plant or aquatic life.
 - E. Noise. All noises shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness.
 - F. Odors. No activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside its parcel.
 - G. Radioactivity and Electrical Disturbances. No activity shall emit radioactivity or electrical disturbances outside its premises that are dangerous or adversely affect the use of neighboring parcels.
 - H. Vibration. No activity shall emit vibrations which are discernible without instruments outside its parcel.
17. Maintenance Responsibilities.
- A. Each lot owner shall keep their property, all contiguous street right-of-way to edge of pavement, and all drainage and easement areas in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:
 - (1) The removal of all litter, trash, refuse and wastes.
 - (2) Compliance with the City's plant and weed control ordinance, including the mowing of all grass areas.
 - (3) The care and pruning of trees and shrubbery within property boundaries and all terrace trees in the street right-of-way adjacent to the property.
 - (4) The maintenance of exterior lighting, signs and mechanical facilities.
 - (5) The keeping of all exterior building surfaces in a clean, well-maintained condition.
 - (6) The striping and sealing of parking and driveway areas.

- (7) The removal of unlicensed or inoperable vehicles.
 - (8) Snow and ice removal.
 - (9) The maintenance of all drainageways including the removal of all debris, weeds and silt.
- B. During construction, it shall be the responsibility of each owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials; and that construction materials, trailers and the like are kept in a neat and orderly manner. Burning of excess or scrap construction materials is prohibited. Construction site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution of air or water during construction.
- C. The owner of any undeveloped lands shall maintain said lands free of rubbish, noxious weeds and mosquito breeding pond conditions.

18. Recapture and Resale of Land.

- A. If a buyer of any lot does not commence construction of a principal building or principal buildings thereon within 12 months after the date of purchase and complete the construction of a building or buildings thereon within 2 years after the date of purchase, the City shall have the option to repurchase the property. Exercise of the option shall be affected by resolution adopted by the City Council. Such option shall be exercisable upon delivery in writing of a notice to the buyer within 6 months after the expiration of such 12 month or 2 year period. Closing shall take place within 60 days following the exercise of such option on such date as shall be designated by the City specified in such notice. The purchase price to be paid by the City upon the exercise of such option shall be the sum of the following:

- (1) The purchase price paid for the land by the buyer.
- (2) The current market value of all improvements, if any, thereon made by the buyer.
- (3) All special assessments which have been paid by the buyer or levied against the premises during the period of such buyer's ownership.

less the sum of the following:

- (4) Unpaid real estate taxes.
- (5) Proration of current year's real estate taxes to date of closing.
- (6) Title insurance policy premium.
- (7) Liens and encumbrances on the property of a definite or ascertainable amount.
- (8) The cost of any environmental audit and/or clean-up deemed necessary by the City to have performed on the parcel.

Conveyance shall be by warranty deed, free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership of the

property, and subject to municipal and zoning and land division ordinances, recorded easements for public utilities, and recorded Declaration of Restrictions and Covenants and amendments thereto. Seller shall furnish title insurance policy at seller's expense for full amount of purchase price.

- B. In the event a buyer elects to sell all or any part of any parcel which is vacant, the same shall first be offered for sale, in writing, to the City at a price per acre computed as set forth in Subsection A above. The City shall have 60 days from the receipt of such offer to accept or reject same. Acceptance or rejection of such offer shall be effected by resolution adopted by the City Council. Upon acceptance by the City, conveyance shall be by warranty deed free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership of the property, and subject to municipal and zoning and land division ordinances, easements for public utilities, and building restrictions and ordinances. The seller shall furnish title insurance policy at seller's expense.
- C. If the City fails to timely exercise the option described in Subsection B above or rejects said offer, buyer may then sell such property to any other buyer and the City shall have no further interest therein, except that any use of said property by any subsequent buyer shall be subject to applicable zoning and land division ordinances, restrictions, and regulations of the City related to the use of said property at the time of such sale and to the provisions of this Declaration of Restrictions and Covenants.
- D. Nothing contained herein shall be deemed to give the City a right of first refusal or option in the event that a buyer of a parcel who has improved the same by construction of a building or buildings thereon shall propose to sell all of such property as one parcel together with the improvements thereon, it being intended that the provisions of this shall apply only to the resale of vacant parcels.

19. Number of Years Restrictions and Covenants to Run with the Land.

Each lot shall be conveyed subject to the restrictions and covenants set forth herein, all of which are to run with the land and shall be binding on all parties and all persons claiming them for a period of 10 years from the date of this Declaration of Restrictions and Covenants is recorded, after which time said restrictions and covenants as are then in force and effect shall be automatically extended for successive periods of 10 years each, unless an instrument terminating such restrictions and covenants by the City Council as evidenced by a resolution is duly adopted by at least three-fourths favorable vote of all members of the City Council.

20. Amendment of Declaration of Restrictions and Covenants.

The restrictions and covenants set forth herein may be amended only upon the execution and recording of a written instrument to said effect by the City Council as evidenced by a resolution duly adopted by at least three-fourths favorable vote of all members of the City Council at any time.

21. Enforcement.

A. Abatement, Injunction and Suit. Violation or breach of any restriction or covenant herein contained shall give to any and every owner of property within the Industrial Park, and the City of Fond du Lac, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or attempted to violate any of these restrictions and covenants to enjoin or prevent them from doing so, and to cause said violation to be removed or remedied and to recover damages for said violation, including the attorney's fees of the prevailing party or parties, and such amount as may be fixed by the Court in such proceedings.

B. Property Maintenance. Should any landscaping improvements such as grass, weeds or other shrubs and trees or decorative materials, become overgrown, the City of Fond du Lac may order that such area be trimmed, mowed or groomed within 48 hours by written or verbal request. If after 48 hours have passed, the owner neglects to take such actions requested, the City may enter the property and take such actions as are necessary, and assess such costs as a special assessment charge against the property pursuant to Sec. 66.60 (16) of the Wisconsin Statutes.

Furthermore, the City of Fond du Lac may enter upon the premises that have been vacated or abandoned for 90 days or more for the purpose of performing such maintenance as may be necessary to prevent the exterior of any buildings and grounds from deteriorating, becoming unsightly or otherwise detracting from the appearance and general character of the industrial park. Any expense incurred by the City hereunder shall be charged against the property abandoned and it shall be the obligation of the owner, lessee or sublessee to pay such expense to the City upon written demand for payment.

22. Severability.

Invalidation of any one of the restrictions or covenants contained within this Declaration of Restrictions and Covenants, by judgment or court order, shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

23. Other Applicable Laws.

Notwithstanding the provisions contained herein this Declaration of Restrictions and Covenants, all development with the Fond du Lac Southwest Industrial Park shall be in accordance with all applicable local, state and federal laws.

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