

## **DECLARATION OF COVENANTS AND RESTRICTIONS**

### **Whitewater Business Park Subdivision**

**KNOW ALL MEN BY THESE PRESENTS** that the City of Whitewater, Wisconsin, a municipal Corporation, as the owner of the land described below in order to assure the public and the future owners of Lots located in the above subdivision being developed as a business park by the City of Whitewater of the orderly and compatible development and use of said lands hereby declares that all lots in the above subdivision being developed by the City of Whitewater shall be subject to the following provisions, restrictions, and covenants, which shall be covenants running with the land intending hereby to preserve the values of the lots and parcels contained within the business park being developed by the City of Whitewater on said lands.

#### **DESCRIPTION OF LAND:**

The land which is included in the above subdivision which the City of Whitewater is undertaking and intends to develop as a business park is more particularly described as follows, to-wit:

The lots and parcels which are and shall be subject to the provisions of this declaration are those parcels designated as Lots on the final subdivision plat of the above subdivision and any future lots which may be created by further subdivision by the City of Whitewater of any said lots or outlots included in the aforementioned subdivision.

#### **1. GENERAL PROVISIONS**

It is the intent of this declaration that all structures and uses erected, enlarged, added to, altered, used, and maintained shall be designed, constructed and used so as to meet all applicable State of Wisconsin laws, administrative codes, and City of Whitewater Municipal

codes pertaining to building construction, sanitation and zoning, and so as to provide for a compatible and aesthetically pleasing development.

No building or improvement shall be erected, placed or altered on any building site in the business park until the plans and use for such building or improvement including site plans, landscaping plans, building plans and specifications have been approved by the City of Whitewater Plan and Architectural Review Board. All proposed construction shall be completed within one year of commencement.

Use of parcels covered by these covenants shall be occupied only for uses permitted under zoning classification M-1 and shall be limited to trades or industries of a restrictive character which are not detrimental to the Business Park or to the adjoining residential areas by reason of appearance, noise, dust, smoke, or odor, or similar condition as hereinafter provided. The following uses, not intending hereby to limit enumeration, shall be prohibited.

1. Quarrying.
2. Junkyards or salvage yards.
3. Drop forges, foundries, refineries, concrete & plaster manufacturing & assemblage, or any similar use, the normal operation which causes objectionable noise, odor, dust or smoke or any similar use.
4. Any other use, the normal operation of which causes objectionable appearance, noise, odor, dust or smoke.

## **2. BUSINESS PARK LOT DEVELOPMENT**

No improvement, structure, addition or alteration shall be nearer than fifty (50) feet to the R.O.W. line on any Business Park street or road. Corner lots shall have two (2) street setbacks each of fifty (50) feet.

Side yards shall be a minimum of twenty-five (25) feet set back on each side of a structure to the side lot line. Corner lots shall have a side yard designated on the face of the site plan and such yard shall be a minimum of twenty-five (25) feet distance from the side lot line.

Rear yards shall be a minimum of thirty (30) feet from the rear lot line.

All structures shall be designed and constructed in such manner as to provide an aesthetically pleasing development. The front and side wall of all structures facing a street shall be faced with at least thirty percent (30%) decorative masonry or other material approved by the Plan & Architectural Review Board after review of plans submitted by applicant. Side walls of structure facing a yard shall have the aforementioned facing extended for minimum distance of twenty (20) feet or to a natural dividing point approved by the Plan & Architectural Review Board.

Walls facing side and rear yards shall be finished in materials complimentary to the façade facing the streets. Where plan concrete block masonry is used, such masonry shall be painted with a minimum of two (2) coats of paint.

All buildings shall at all times be kept clean and in good repair, condition and appearance.

### **3. PARKING AND ACCESS**

Parking of vehicles other than passenger vehicles shall be prohibited at all times within fifty (50) feet of any street R.O.W. of any parcel in said Business Park. The fifty (50) foot “setback” shall be entirely graded and sodded or seeded, and properly landscaped between side lot lines and from the road shoulder to the building face in a manner that will produce an acceptable lawn, excepting only such areas as may be required for driveways and sidewalks. The entire parcel of land under each ownership shall have the grass, trees and shrubbery maintained and kept in good appearance at all times. All driveways and parking areas shall be hard finish surfaces with all materials meeting the accepted standards of the construction trades. One circular drive may be

permitted in front of the building; however, parking of vehicles other than passenger vehicles must be at least fifty (50) feet from the R.O.W. The storage or parking of vehicles, other than passenger vehicles, or of trucks, products, or equipment shall be prohibited in the fifty (50) feet from the R.O.W. area. All such landscaping, drives and walks shall be completed within one (1) year of construction of the building, or within one (1) year of paving of the City street serving the property; which ever is later. Vehicle parking shall not be allowed on public streets within the City of Whitewater Business Park. Parking of passenger vehicles shall be no closer than thirty (30) feet from the street right-of-way.

#### **4. OUTDOOR STORAGE**

Outdoor storage of vehicles, products, equipment, supplies and other materials will be permitted in the side and rear yards of the parcel and must be screened with screening approved by the Plan & Architectural Review Board. Screening requirements shall not apply to the parking of vehicles regularly used and operated in the normal course of owner's business.

Temporary outside storage will be permitted by prior written approval by the City Plan & Architectural Review Board.

#### **5. FENCING**

Security fences may be located on the lines between adjoining lots. No fence shall be less than six (6) feet high, nor more than eight (8) feet high, plus may have located on top the accepted barbed wire "Y" or angle security device not to exceed twenty-four (24) inches.

Fences may be of the chain link type construction. If different type of design is being proposed, such design and materials may be permitted after review and approval by the Plan & Architectural Review Board of specific plans by the applicant.

Fences are not permitted to extend beyond the minimum required street yard, or in case of a greater setback, shall not extend beyond the front of the structure into the street yard. Corner lots shall have fencing extend to the minimum setback requirement and shall not extend into the street yard in front of structure.

## **6. LOADING AREAS**

All loading areas shall be off street and located on the same lot or adjoining owned lots as the building. The loading area shall not be permitted in the street and will be permitted only in side and rear yards.

## **7. LANDSCAPING**

All street yards shall be graded and appropriately sodded or seeded and properly landscaped.

All other portions of the lot reserved for future expansion of the facilities and not surfaced for parking or loading purposes, shall be maintained and mowed in accordance with the City noxious weed code. Landscaping of the building site shall be accomplished so as to enhance the aesthetic and architectural beauty of the structure. All landscaping shall be approved by the Plan & Architectural Review Board.

## **8. DRAINAGE CONTROL**

No land shall be developed and no use shall be permitted that results in flooding, erosion or sedimentation on adjacent properties. All runoff shall be properly channeled into a storm drain, watercourse, storage area, or other stormwater management facility.

## **9. SIGNS AND BILLBOARDS**

No sign shall be erected or maintained on the Property except in conformity with the following:

- a. All signs required shall be subject to approval by the Plan & Architectural Review Board.
- b. One freestanding, monument ground type sign per business shall be permitted. The sign shall not exceed an area of forty (40) square feet nor a height of ten (10) feet and shall be no closer than ten (10) feet to any property line.
- c. Freestanding signs shall be no closer than eighty (80) feet to another freestanding sign.
- d. All signs attached to the building shall be flush mounted. Only one (1) exterior (unless corner lot) wall sign per business shall be allowed covering no more than (20) percent of the wall area with the sign not extending above the structure's roof line.
- e. Signs shall not be painted directly on the outside wall of a building nor are they permitted to be painted on a fence, tree, stone, or other similar objects.
- f. Offices, warehouses, and other buildings with multiple businesses may construct a comprehensive sign which must receive Plan & Architectural Review Board approval.
- g. Signs shall be restricted to advertising only the person, firm, company, or corporation operating the use conducted on the site or products produced or sold therein.
- h. Motion signs, roof signs, projecting signs, or flashing signs are not permitted.
- i. Signs may be illuminated subject to the Plan & Architectural Review Board approval.
- j. No sign shall contain any indecent or offensive picture or written manner.

- k. Window signs cannot exceed one-third (1/3) of the total window area in which they are displayed.
- l. One (1) construction sign denoting the architects, engineers, contractor, and other related subjects shall be allowed upon commencement of construction.
- m. Temporary real estate for sale or for rent signs shall be allowed. Said signs shall not exceed sixteen (16) square feet.

#### **10. UTILITY CONTROL**

All utilities including all electric power, telephone and other communication equipment, gas, water, storm and sanitary sewers, excepting electric power lines exceeding 26.4kv, shall be underground. The location of the utility shall be subject to approval by the Plan & Architectural Review Board.

#### **11. RUBBISH AND WASTE MATERIALS**

No rubbish shall be burned on the premises except in an incinerator designed and approved for such purposes, meeting all appropriate state and federal air emission standards.

All waste materials shall be located and kept in containers for pick up or proper disposal. Storage of waste materials shall not exceed thirty (30) days on any lot.

#### **12. RESALE OF LOTS**

In the event the owner of land other than the City of Whitewater elects to sell any portion of the undeveloped land which is not being used in connection with the business or industry of such owner, the same shall be first offered for sale, in writing, to the City of Whitewater at the price per acre paid for such land when such land was purchased from the City of Whitewater, together with the costs of any special assessments paid from the date of purchase of said land from the City of Whitewater to the date of closing if purchased by the City of Whitewater. The City of

Whitewater shall have ninety (90) days from the date of receipt of such offer to accept or reject the same, unless, an extension of the time may be mutually agreed upon and set forth in writing. Acceptance or rejection of any such Offer shall be approved by the Common Council of the City of Whitewater. In the event the City of Whitewater accepts such Offer, the owner shall convey title to said land to the City of Whitewater by Warranty Deed free and clear of all liens and encumbrances except these covenants, conditions, and restrictions, recorded easements for public utilities approved by the City of Whitewater, rights of the public in roadways as laid out, dedicated, or used, deferred unpaid special assessments for public improvements, if any: Seller shall be responsible for prorated real estate taxes for the year of the sale through the date of the sale: Owner shall provide at owner's expense a title insurance policy insuring the City of Whitewater as the owner upon repurchase for the full amount of the repurchase price. In the event the City of Whitewater rejects any such offer and said owner proceeds with the sale of any portion of its undeveloped land to a third party, said conveyance shall be subject to the continuing provisions of this paragraph and said third party purchaser, if it in the future elects to sell any portion of the undeveloped land which is not then being used by it in connection with its business or industry, shall be required to again first offer said portion for sale in writing to the City of Whitewater at the price paid per acre for such land by the initial purchaser from the City of Whitewater together with the cost of special assessments paid by owners of said lands from the date of the original sale by the City of Whitewater to the date of repurchase, all on the same terms and conditions as first set forth above: it being the intent that the City of Whitewater shall have and retain a continuing right to repurchase undeveloped lands under this paragraph.

### **13. RECAPTURE AND RESALE OF LAND**

- a. If an owner, other than the City of Whitewater, of any lot does not commence construction of a building or buildings thereon within two (2) years after the date of purchase of said lot, the City shall have the option to repurchase said lot. Exercise of the Option shall be effected by a resolution adopted by the Common Council of the City of Whitewater. So long as said owner has not commenced construction of a building or buildings on said lot, said Option shall be exercisable by the City of Whitewater upon delivery in writing of a notice to said Owner at any time after the expiration of said two (2) year period, or such longer period as may be agreed to in writing between said Owner and the City of Whitewater Common Council. Closing shall take place within sixty (60) days following the exercise of said Option on said date as shall be designated by the City of Whitewater specified in said Notice of Exercise or on such later date as may be agreed to in writing between said Owner and the City of Whitewater Common Council. In the event the City of Whitewater exercises its Option to Purchase contained in this paragraph, the purchase price to be paid by the City of Whitewater shall be computed at the price per acre paid for such land by the initial purchaser of said land at the time of purchase thereof from the City of Whitewater plus any special assessments paid by the Owner of such land from the date of purchase of such land from the City of Whitewater to the date of closing of the repurchase by the City of Whitewater under this paragraph. In the event the City of Whitewater exercises its Option to repurchase hereunder, conveyance

shall be Warranty Deed from said owner to the City of Whitewater free and clear of all liens and encumbrances except municipal, zoning, and land division ordinances, the provisions of the declaration and any amendments hereto, recorded easements for public utilities approved by the City of Whitewater, right of the public roadways as laid out, dedicated, or used, unpaid future installments of special assessments for public improvements, if any: owner shall be responsible for prorated real estate taxes for the year of closing through the date of closing; owner shall furnish to the City of Whitewater at Owners expense a title insurance policy for the full amount of the repurchase price insuring title in the City of Whitewater upon consummation of said repurchase in the condition called for above.

- b. Nothing contained in this paragraph shall be deemed to give the City of Whitewater a right of first refusal or option with regard to lands which have been improved by the construction of a building or buildings thereon, it being intended that the Option provisions set forth above shall apply only to vacant parcels and that the owner of any lot which has been improved by the construction of a building or buildings thereon shall have the right to sell all of such property as one parcel together with the improvements thereon.
- c. Any proposed subdivision or resubdivision and any sales of parcels or portions of parcels resulting in change or adjustment of lot lines must be approved by the Plan & Architectural Review Board of the City of Whitewater.

#### **14. DURATION OF COVENANTS AND RESTRICTIONS AND EXTENSION THEREOF**

The covenants, restrictions, and provisions of this declaration shall apply to each lot or parcel in the subdivision, and in the event of any resubdivision of any lot in said subdivision by the City of Whitewater shall also apply to such resulting additional lots and/or parcels, and shall be considered covenants which are to run with the land and shall be binding on all parties and persons claiming under all parties for a period of ten (10) years from the date this declaration is recorded, after which time said covenants, restrictions, and provisions shall be automatically extended for successive periods of ten (10) years, unless within either the original ten (10) year term or any successive ten year term an instrument signed by a majority of the then owners of the lots or parcels in the said subdivision and approved by the Common Council of the City of Whitewater has been recorded agreeing to terminate these restrictions, covenants, and provisions or agreeing to change, modify, or amend said covenants, restrictions, and provisions in whole or in part, and in the event of amendment such amended covenants, restrictions, and provisions shall continue in force in like manner for the balance of that ten (10) year term, and shall in the same way be automatically extended for successive ten (10) year periods. In determining a majority of property owners hereunder, one (1) vote shall be counted for each separate developed lot or developed parcel, and if there is more than one (1) owner of such developed lot or developed parcel, the vote allocated to such developed lot or developed parcel shall be divided between said owners according to their percentage of ownership interests of record. Any lot or parcel owned by the City of Whitewater shall be included in such voting with one (1) vote for each separate lot or parcel and with such votes being exercisable and cast by the action of the

Common Council of the City of Whitewater. Such lots owned by the City of Whitewater are not required to be developed lots in order to entitle the City to vote. Each owner, with the exception of the City of Whitewater, shall be limited to one (1) vote.

#### **15. ENFORCEMENT OF COVENANTS**

Any disputes involving these covenants for the Business Park of the City of Whitewater will be decided by the City of Whitewater Plan & Architectural Review Board.

The enforcement of the restrictions and covenants contained in this Declaration of Restrictions shall be by proceedings of law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages with such election at the option of the enforcing party. Such proceedings may be commenced by any owner or owners of parcels in said Business Park or by the City of Whitewater.

#### **16. MODIFICATION AND AMENDMENT OF DECLARATION OF RESTRICTIONS AND COVENANTS**

The within restrictions and covenants, except the provisions of paragraph 1, 12 and 13 of these restrictions, may be modified and amended only by the Common Council of the City of Whitewater, which changes shall be effective upon the execution and recording of a written instrument setting forth such changes, adopted and authorized by the majority of the full Common Council of the City of Whitewater.

#### **17. VARIANCES**

Where, in the judgment of the Plan & Architectural Review Board, it would be inappropriate to apply literally the provisions of this Declaration of Restrictions and Covenants because exceptional or undue hardship would result, the Plan & Architectural Review Board with the consent of a two-thirds (2/3) majority of the owners who would be entitled to vote under the

terms of paragraph 14, may waive or modify any requirements of Sections 2, 3, 4, 5, 6, 7, 9, and 10 of this Declaration of Restrictions and Covenants. Notwithstanding the above, at such time as more than 50% of the total acreage of the business park subject to these covenants becomes owned or improved by owners other than the City of Whitewater, then the City of Whitewater, shall, providing it is then an owner, for the purposes of determining a two-thirds (2/3) majority, be considered to be the owner of one lot only. All Business Park owners shall be notified in writing of any variance hearing and also as any other requirements by State Statutes.

**18. REAL ESTATE ADDITION TO BUSINESS PARK**

Other lots and parcels of land may be added to the business park from time to time and may be subject to these Covenants. In the event the addition of such property, owners of new lots and parcels shall have the same rights and obligations as the owners of the original business park land.

**19. SEVERABILITY AND INVALIDATION**

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

IN WITNESS WHEREOF, the City of Whitewater has caused these presents to be signed by the City Manager, and counter signed by the City Clerk, at Whitewater, Wisconsin, and its corporate seal to be hereunto affixed this \_\_\_\_\_ of \_\_\_\_\_, 1986.

\_\_\_\_\_

City Manager

\_\_\_\_\_

City Clerk