

**DECLARATION OF COVENANTS
AND RESTRICTIONS**

Document Number

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 future owners of parcels included in said lands 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 the lands described below and the building parcels and/or lots resulting from subsequent divisions or re-divisions of said lands 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 value of the lots and parcels contained within the area described below being developed by the City of Whitewater on said lands. The City of Whitewater has, and is continuing to undertake, the development of certain lands located in the Walworth

County portion of the City of Whitewater for a Whitewater Business Park and incident thereto, has imposed certain covenants and restrictions on said other lands and may further impose such covenants and restrictions on other lands in the future, which covenants and restrictions, though similar to the covenants and restrictions imposed hereunder, are, are intended to be, and shall be construed to be separate covenants and restrictions. It is specifically intended that the covenants and restrictions imposed hereunder are completely separate and distinct from such covenants and restrictions now imposed on said lands in Walworth County, and that the covenants and restrictions hereby imposed are to be considered administered and enforced separately and distinctly from the covenants and restrictions now imposed on lots and parcels located in the portion of the Whitewater Business Park located in Walworth County. Notwithstanding the foregoing, the covenants and restrictions established and provided for under this declaration may, in the future, be imposed on lots or parcels located in portions of the Whitewater Business Park situated in Walworth County that have not yet been subjected to the covenants and restrictions for the portion of the Whitewater Business Park located in Walworth County, and in the event these covenants are in the future so imposed on lots, parcels or lands located in Walworth County, such additional lands and the application of these covenants and restrictions with respect to such additional lands shall be considered administered and enforced with all other lands subjected to these covenants and restrictions separately and distinctly from the covenants and restrictions now imposed on lots and parcels located in that portion of the Whitewater Business Park situated in Walworth County. All further references in this Declaration of Covenants and Restrictions to the term "Business Park" and/or "Whitewater Business Park" shall be deemed to mean those lands from time to time specifically subjected to this Declaration of Covenants and Restrictions.

RETURN TO:

SIMON LAW OFFICE
304 West Main Street
Whitewater, WI 53190

05-15-34-32

(Computer # 292-0095-00000)

(Parcel Identification Number)

Description of Land

The land which is subjected to these restrictions and which the City of Whitewater is undertaking development of for business park purposes is more particularly described as follows, to-wit: Lot 1 of Certified Survey Map No. 3497, recorded in the Office of the Register of Deeds for Jefferson County, Wisconsin on September 2, 1997 in Volume 15 of Certified Surveys at Pages 386 and 287 as Document No. 978560, and any future lots which may be created by further division or re-division thereof by the City of Whitewater.

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, odor or similar condition as hereinafter provided. The following uses, not intending hereby to limit by enumeration, shall be prohibited:

1. Quarrying.
2. Junkyards or salvage yards.
3. Drop forges, foundries, refineries, concrete and plaster manufacturing and assemblage, or any similar use, the normal operation of 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 and Architectural Review Board after review of plans submitted by applicant. Side walls of structure facing a yard shall have the aforementioned facing extended for a minimum distance of twenty (20) feet or to a natural dividing point approved by the Plan and Architectural Review Board.

Walls facing side and rear yards shall be finished in materials complimentary to the facade facing the streets. Where plain 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. Parking of passenger vehicles shall be prohibited at all times within thirty (30) feet of any street R.O.W. of any parcel in the Business Park; however, the City of Whitewater Plan and Architectural Review Board may reduce the setback for passenger vehicle parking to twenty (20) feet, provided suitable landscaping is provided. The street yard setback areas shall be entirely graded and sodded and seeded and properly landscaped between side lot lines and from the road shoulder to the building faces in a manner that will produce an acceptable lawn, excepting only such areas as may be required for driveways, sidewalks and permitted parking areas and, within such parking areas, landscaping and/or plantings acceptable to the Plan and Architectural Review Board shall be provided. 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, whichever is later. Vehicle parking shall not be allowed on public streets within the Business Park.

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 and 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.

5. FENCING.

Security fences may be located on 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 and 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 street setback requirement and shall not extend into the street yard in front of any structure.

6. LOADING AREAS.

Loading areas shall not be permitted in the street yard areas, except that loading docks located at least one hundred fifty (150) feet from the street R.O.W. may be permitted with the specific approval of the City of Whitewater Plan and Architectural Review Board.

7. LANDSCAPING.

All street yards shall be graded and appropriately sodded or seeded and properly landscaped. For purposes of these provisions, landscaping may include ponds and/or storm water detention and/or retention basins or areas, subject to the approval by the Plan and Architectural Review Board.

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 and 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 and Architectural Review Board.

- (b) One freestanding, monument ground type sign per business shall be permitted. The sign shall not exceed an area of eighty (80) 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 twenty (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 object.
- (f) Offices, warehouses and other buildings with multiple businesses may construct a comprehensive sign which must receive Plan and 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 the 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 and Architectural Review Board approval.
- (j) No sign shall contain any indecent or offensive picture or written matter.
- (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 the 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 26.4 kv, shall be underground. The location of the utility shall be subject to approval by the Plan and 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. All waste material storage areas shall be screened from view from public R.O.W. with screening approved by the Plan and Architectural Review Board.

12. RESALE OF LOTS.

In the event 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 sale through the date of 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 any 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 this declaration and any amendments hereto, recorded easements for public utilities approved by the City of Whitewater, rights of the public in 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 Owner's 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 re-subdivision and any sales of parcels or portions of parcels resulting in change or adjustment of lot lines must be approved by the Plan and 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 the parcel herein described and, upon subsequent re-divisions thereof, shall also apply to all such resulting additional lots and/or parcels, and shall be considered covenants which are to run with the land and shall be binding upon 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 (10) year term, an instrument signed by the then owners of the lots or parcels then subject to these covenants and restrictions holding a majority of the votes (as hereinafter defined) and approved by the Common Council of the City of Whitewater has been recorded agreeing to terminate these covenants, restrictions and provisions, and in the event of amendment of these covenants, restrictions and provisions in accordance with the provisions of paragraph 16 hereof, the same shall continue in force as so amended, 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 voting rights hereunder, one (1) vote shall be counted for each developed lot or developed parcel, and if there is more than one (1) owner of any 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 such separate lot or parcel; however, in the event any such lot or parcel owned by the City of Whitewater is greater than twenty (20) acres, then the City of Whitewater shall have a number of votes with respect to such larger parcel equal to the nearest whole number arrived at by dividing the number of acres contained in such larger parcel by the number twenty (20). Those votes of the City of Whitewater shall be exercisable and cast by the action of the Common Council of the City of Whitewater. Each owner, with the exception of the City of Whitewater, shall be limited to a maximum of one (1) vote.

15. ENFORCEMENT OF COVENANTS.

Any disputes involving these covenants shall be decided by the City of Whitewater Plan and 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 then subject to these restrictions and covenants or by the City of Whitewater.

16. AMENDMENT OF DECLARATION OF RESTRICTIONS AND COVENANTS.

Except as hereinafter provided, the within restrictions and covenants may be amended by a written instrument executed by the then current owners of lots or parcels then subject to these restrictions holding a majority of votes as determined under the provisions of paragraph 14 hereof and approved by the Common Council of the City of Whitewater. Notwithstanding the foregoing, any amendment or modification of the provisions of paragraph 1 of these covenants and restrictions which would result in said provisions being less restrictive shall require that said written instrument be executed by 100% of the owners of the lands then subject to these restrictions who would be entitled to vote under the terms of paragraph 14. Any such amendment shall be effective upon the recording of such amendment in the Office or Offices of the Register of Deeds for the county or counties in which the real estate which is then subject to these restrictions is located.

17. VARIANCES.

Where, in the judgment of the Plan and Architectural Review Board of the City of Whitewater, it would be inappropriate to apply literally the provisions of these restrictions and covenants because of unusual circumstances or because exceptional

or undue hardship would result, the Plan and Architectural Review Board of the City of Whitewater may waive or modify any requirements of sections 2 through 10 inclusive hereof, subject, however, to the following:

- (a) Not less than ten (10) days prior to the date of consideration of such waiver or modification by the Plan and Architectural Review Board, written notice specifying the proposed waiver or modification and the time, date and place when the Plan and Architectural Review Board will consider such proposed waiver or modification shall be mailed to the then current owners of all of the lots or parcels then subject to these covenants and restrictions who would be entitled to vote under the terms of paragraph 14, utilizing for such mailing purposes the most recent addresses for such owners contained in the assessment roles of the City of Whitewater;
- (b) In the event written objections to such proposed modification or waiver executed by a majority of the owners who would be entitled to vote under the terms of paragraph 14 are delivered to the City Clerk of the City of Whitewater prior to the time and date of the meeting at which the Plan and Architectural Review Board is to consider such waiver or modification, such waiver or modification may not be approved or granted by the Plan and Architectural Review Board.

18. EXPANSION OF LANDS SUBJECT TO THESE COVENANTS AND RESTRICTIONS.

The City of Whitewater reserves the right to subject additional lots and parcels of land to these covenants and restrictions by written instrument specifying that such additional lots or parcels are so subjected hereto. In the event any additional lots or parcels are so subjected to these covenants and restrictions, such additional lands shall then be deemed to be parcels or lots subject to these restrictions and, thereafter, the then current owners of such additional lots or parcels shall have the same rights and obligations as the owners of the lots or parcels initially subjected to these restrictions and covenants.

19. SEVERABILITY AND INVALIDATION.

Invalidation of any of the covenants or restrictions herein set forth, or as hereafter existing by way of amendment or modification as herein provided, by judgment or court order, shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, nor shall any such judgment or court order render inapplicable the provisions of these covenants and restrictions to persons or circumstances other than those held invalid by such judgment or court order.

IN WITNESS WHEREOF, the City of Whitewater has caused these presents to be signed by its City Manager and countersigned by its City Clerk at Whitewater, Wisconsin, and its corporate seal to be hereunto affixed this 3rd day of September, 1997.

CITY OF WHITEWATER, WISCONSIN

By _____ (SEAL)
Gary W. Boden, City Manager

(Affix City Seal)

Attest:

Audrey B. Route, City Clerk (SEAL)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF WALWORTH)

Personally came before me this 3rd day of September, 1997, the above named Gary W. Boden, City Manager of, and Audrey B. Route, City Clerk of, the City of Whitewater to me known to be the City Manager and City Clerk of the City of Whitewater, and to me known to be the persons who executed the foregoing instrument

and acknowledge that they executed the foregoing instrument on behalf of the City of Whitewater as the duly-authorized act and deed of the City of Whitewater.

Mitchell J. Simon, Notary Public
Walworth County, State of Wisconsin
My commission is permanent.

INSTRUMENT DRAFTED BY:

Mitchell J. Simon, Attorney at Law
State Bar No. 01015249
304 W. Main St., Whitewater, WI 53190

City-Covenants and Restrictions-Business Park