

REVISED  
PROTECTIVE COVENANTS  
FOR THE  
CITY OF ALLEGAN, MICHIGAN  
HIGHLANDS INDUSTRIAL PARK

**Recitals**

WHEREAS, Grantor (defined below) as the owner of the real property described in Article I of this Declaration (the "Real Property") imposed upon the Real Property certain conditions, covenants, restrictions, reservations, and easements recorded with the Allegan County Register of Deeds as follows:

- Restrictive Covenants for the City of Allegan's Industrial Park recorded in Liber 1173, Page 721
- Revised Protective Covenants for the City of Allegan, Michigan Highlands Industrial Park recorded in Liber 1556, Page 807

(the "Covenants").

WHEREAS, the Covenants provide a right to amend the Covenants by the owners of 75% of the fee simple property owners of the Real Property.

WHEREAS, after notice and an opportunity to be heard, the owners of 75% of the fee simple property owners of the Real Property agreed to amend the Covenants, as set forth below.

**Covenants**

NOW, THEREFORE, the Covenants are hereby amended, modified and revised as hereinafter set forth. All terms and provisions of the Covenants are incorporated herein; provided, however, that the terms and provisions of this document govern and control to the extent any provision of the Covenants is inconsistent or contrary to the terms of this document.

**ARTICLE I**

**Definition of Terms**

Except as hereinafter defined, the definitions the City of Allegan zoning ordinance shall prevail.

"Grantor" shall mean the City of Allegan, its successors and assigns.

"Building site" shall mean any lot or portion thereof upon which a building or buildings and appurtenant structures may be erected in conformance with the requirements of these covenants.

"Improvements" shall mean and include any industrial or commercial buildings and out-buildings appurtenant thereto, parking areas, fences, walls, hedges, lawns, plantings, walkways, and any structure of any type or kind located above the ground.

"Architectural Control Committee" or "ACC" shall mean the Highland Industrial Park Owners' Association, its successor or assigns, which Committee shall be created under the provisions contained herein.

"Zoning ordinance" shall mean the zoning ordinance of the City of Allegan as it now exists or as it may hereafter be amended.

"Loading Berth" shall mean an off-street space on the same lot with a building or group of buildings, for temporary parking for a commercial vehicle while loading or unloading merchandise or materials. Off-street loading space is not to be included as off-street parking space in computation of required off-street parking. A loading space is five hundred twenty-eight (528) square feet in area.

### The Real Property

The City of Allegan, Highlands Industrial Park, legally described as Lots 1 through 27, inclusive in the "Allegan Industrial Plat, No.1" as recorded in Liber 12; pages 90-93, Allegan County Register of Deeds, Allegan County Building, Allegan, Michigan.

## **ARTICLE II**

### General Purposes of Conditions

The real property described in Article I is subject to the conditions, covenants, restrictions, reservations, and easements hereby declared to insure the proper use and appropriate development and improvement of each building site; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection of structures of improper or unsuitable materials; to encourage the erection of attractive improvements with appropriate locations on the building site; to prevent haphazard and inharmonious improvement of building sites; to insure and maintain proper setbacks from streets and adequate open space between structures; and in general to provide for high quality improvements on the subject property.

## ARTICLE III

### General Restrictions

1. All uses of the Real Property must comply with the zoning ordinance and codes of the City of Allegan.
2. No noxious or offensive trade or activity shall be carried on upon the Real Property.
3. All signage and buildings situated on the property shall be constructed in accordance with the zoning ordinance and all applicable laws, statutes, ordinances, codes, rules and regulations of all governmental agencies having jurisdiction thereof and in a manner so as to have the ability to withstand the normal causes of deterioration with normal maintenance procedures.

### Specific Restrictions

4. Outdoor Signs. The location and proposed type and size of all outdoor signs to be situated in or about the premises are subject to prior review and approval by the ACC. The following signage requirements shall apply:
  - a. Signs identifying the owner, tenant, occupant, person, firm, company or corporation shall be permitted. Signs must be permanent, may be of a freestanding nature or attached to the building, and may not exceed the height of the building.
  - b. Temporary outdoor advertising, billboards, neon or flashing lights are not permitted.
  - c. Sign materials must be compatible with the appearance of the building's finished materials, as determined by the ACC.
  - d. Signs shall not obstruct the view of traffic from the sidewalks, roadways, driveways or exits, and adjoining property. No sign shall constitute a nuisance to an adjacent residential district or residential neighborhood by reason of glare, intermittent action or other action.
  - e. All advertising signs or displays shall be maintained in a proper and business like manner. The ACC reserves the right to approve the size and location of any sign within the Park and, in the event such sign is not maintained, to order its removal.
5. Building Height. Buildings and improvements not exceeding a maximum of forty (40) feet in height shall be permitted to be constructed on the premises only; and further provided, at all time no structure shall be erected or natural growth permitted which would constitute an obstruction to air navigation.

6. Types of Building Materials. No temporary structure shall be situated, erected or maintained on the Real Property or any portion thereof. All accessory structures shall be approved by the ACC.

The exterior of the buildings shall be finished in materials such as decorative, fluted or finished brick, block, wood, vinyl, glass or decorative metal on sides that face an exterior or internal road. For the exterior of the office area, contrasting or architecturally accenting material shall be used. These materials shall be designed and maintained in a manner that is consistent with the design of the building.

The ACC will retain the right to review all site materials planned to be used to ensure full compliance with all terms and provisions of the Covenants. Previously used materials shall not be incorporated within any building without the prior written consent of the ACC.

The design, materials, construction and final finish of all buildings must fully comply with the Covenants, the Michigan building code and all Allegan City Codes, and written confirmation of the same must be delivered to the ACC. All architects, engineers, contractors, and subcontractors must be appropriately licensed and have the experience needed to meet all professional criteria to ensure a quality and lasting structure, and the ACC will not approve any building or structure without written confirmation from the City of Allegan Building Department of the same.

7. Maintenance. At all times the exterior of the buildings on the premises and the parking areas, lands, fences, and landscaping must be maintained in a neat, safe, clean, and orderly appearance and must at all time comply with all governmental health, fire and police regulations. Failure to comply with this paragraph by a property owner shall permit Grantor and the ACC, after 10 days written notice to the property owner, to enter the premises and make any and all corrections or improvements that may be required or necessary to meet such standards and regulations. The property owner will be charged with the expense incurred in so doing.

8. Parking and Loading. All parking areas within the Highlands Industrial Park must be paved parking. Parking areas, driveways, truck turnaround areas and truck loading/unloading areas shall be paved with concrete or asphalt material. Parking areas must be well maintained. Off-street parking and the Loading Berth shall comply with the zoning ordinance of the City of Allegan. The Loading Berth is preferred at the side and/or rear of buildings. All loading dock and Loading Berth specifications are subject to ACC approval. Parking and Loading Berths shall be suitably paved and kept in good condition, with proper and required drainage and snow removal. Parking and loading areas shall be landscaped in such a manner as to not interrupt the view of these areas.

9. Setbacks. The location of any building on the premises shall be in compliance with all setback requirements set forth in the zoning ordinance. On corner lots the ACC will designate one street exposure as the front of the building.

10. Storage. No open, unenclosed storage of materials, supplies, equipment, or any other thing or matter used or consumed on the premises shall be permitted unless in compliance with the terms and conditions concerning the prior approval of the ACC as provided in Article V. All materials, supplies, equipment or matter to be used for any purpose on the premises shall be stored indoors and away from public view, unless prior approval is obtained from the ACC as provided in Article V.

11. Fencing. Fencing will be permitted only with prior approval of the ACC. Fencing shall meet all requirements of the zoning ordinance.

12. Waste Disposal. All waste, debris, and trash from the premises shall be stored and placed in suitable and safe covered containers and removed from the premises by the occupant at its expense from time to time as required and no waste container shall be permitted in the front yard of the premises. At all times the area for such waste containers shall be suitably screened with fencing or hedges and shall comply with minimum setback requirements.

13. Landscaping. The entire building site not devoted to floor area, parking, outdoor storage, access ways, pedestrian ways, woodland or wetlands shall be landscaped with grass, canopy and coniferous trees, shrubs and other forms of low growing natural ground cover. Areas that are set aside for future expansion must also be maintained as lawn area within 25 feet of streets, roadways, and curb. All developments must meet state and local groundwater and watershed standards. Any areas which become disturbed for any reason shall be restored as soon as practical. All landscape plans must be approved by the ACC. In approving a landscape plan, the ACC will be guided by the following:

a. Installation: Landscaping shall be installed within one year of the Certificate of Occupancy.

b. Materials: All landscaping shall be hardy plant materials and maintained thereafter in a neat and orderly manner. Withered and/or dead plant materials shall be replaced within a reasonable period of time but no longer than one growing season.

c. Seeding/Sodding: All seeding and sodding should be accomplished using the best practices of the turf industry. All surfaces to receive seed should be level with adjacent walls and/or curbs. Turf / ground cover areas are to be installed as soon as possible within the construction process to avoid excessive runoff or impact on neighboring properties. All turf should be selected to meet the best industry recommendations for this area.

d. Sprinkling: Underground sprinkling systems shall be encouraged where necessary to service landscaped areas and such areas shall be neatly maintained, including mowing, fertilizing and pruning.

e. Maintenance of Landscaping: Yards shall at all times be satisfactorily landscaped and maintained in a neat and orderly appearance with no debris permitted to accumulate thereon. Regular and required lawn mowing shall be performed as described in the

applicable Code of Ordinances of the City of Allegan. Soil erosion by water run off or wind action is prohibited and modifications to the yard must be made promptly to avoid same.

f. Planting Concept and Street Trees. All areas not covered by the building, parking and walkways are to be landscaped according to guidelines herein.

(i) The plantings shall be appropriate for the public roadway systems and adjacent land area within the right-of-way. A tree placement plan prepared by the City Tree Commission will serve as the preferred planting plan. This planting concept is organized using two basic planting formats—canopy trees and ground plane plantings.

(ii) Plantings are to be in a form and location which enhances the architectural and physical character of the building. All plant materials to be used will be from the City's approved palette of materials. Plant materials will conform to the approved species, sizes, and spacing as designated.

(iii) Street tree species shall be chosen from the approved list of species established by the City Tree Ordinance. Trees shall not be planted closer than 15 feet to 18 feet from each other or the curb line. Street trees shall not be planted over easements without prior approval by the City of Allegan Public Works Department.

(iv) Surface planting or planting from ground level to approximately 4 feet to 5 feet in height is considered ground plane planting.

(v) The planting design plan shall recognize all neighboring owners' planting concepts, and shall respect and respond to the existing site conditions to assure continuity of planting.

(vi) Planting design plans shall provide both an orderly spacing and organization of trees as well as the informal massing of selected species. Planting masses will be consistent with the horizontal and vertical alignment of the road to create a sequence of spaces.

g. Grantor or ACC shall have the right to complete landscaping as set forth herein if such landscaping is not substantially completed within one (1) year of commencement of initial construction on the premises. The amount of such expense is immediately due and payable and if not paid, Grantor or ACC may institute proceedings to recover the expense, including adding such expense to the tax statement on the premises and making such expense a tax lien against the premises.

14. Sewer and Water. All buildings will be connected to the City of Allegan sewer and water system.

15. Electrical and Telephone Lines. All power, electrical and telephone lines servicing any improvements on the premises shall be located beneath ground level. No antennas, towers, dishes or any other external structures shall be erected on the site without prior approval

from the ACC, and all such structures shall comply with any applicable governmental regulations, ordinances, rules or statutes.

## ARTICLE IV

### Architectural Control Committee

For the purpose of reviewing proposed development plans and performing such other functions as are indicated herein, there shall be created an Architectural Control Committee, to consist of the City of Allegan Highland Industrial Park Owners' Association members as described in the City of Allegan Highlands Industrial Park Owner's Association Committee (October 1994) document.

## ARTICLE V

### Development Plan Approval

The following development plan approval procedure is intended to enable the ACC to make a finding that the proposed development plan is in conformity with the intent and provisions of covenants contained herein.

Prior to the formal submittal of development plans to the City of Allegan for approval under the terms of the City of Allegan zoning ordinance, and prior to the construction of any improvements, the plan for such improvements shall be submitted to the ACC for approval and to electric and gas utility company for information and comment.

In making an application for development plan review, the property owner shall submit ten (10) copies of the development plan to the ACC. Within thirty (30) days after submission, the ACC shall either approve or disapprove the development plan. In each case, the development plan submitted shall contain the following items and considerations:

- site dimensions;
- all structures and buildings - location, size, height, proposed use, and location of doors;
- yards and open space;
- walls, fences, and landscaping and location and height thereof;
- access - pedestrian, vehicular, and service;

- off-street parking - location, number of spaces, and arrangement of internal circulation;
- off-street loading - location, number of spaces, arrangement, and internal circulation;
- signs - location, size, height, illumination, materials, wording, logo, and trademarks to be used;
- lighting - location, intensity, height, and shielding devices;
- landscape treatment - plant groupings and materials to be used;
- waste disposal;
- drainage and grading plan;
- methods to be employed to control the transmission of dirt, dust, noise, odor, fumes, smoke, vibration, glare or radio energy.
- location of easements - location, size, and pertinent engineering factors pertaining to all utilities including, but not limited to, communications transmission cables, water, sewer, storm sewer, electric transmission facilities, and railroads;
- building plans shall include adequate perspectives and/or elevations to facilitate review of their compatibility with existing developments, and the developer is encouraged in the planning process to recognize the importance of providing amenity to the development in question and to the surrounding area;
- evidence that the applicant has the resources to accomplish the development plan, which evidence may include a bank commitment letter, or other financial documentation which is acceptable to the ACC.
- such documentation as needed to show that the architect(s), engineer(s), contractor(s), all materials suppliers, and all subcontractors are experienced in the development of similar properties and will meet all City of Allegan requirements to work in the City and to complete the project in a timely and professional manner.
- other data, which may include performance bonds and certificates of insurance, as reasonably needed to assume compliance with the Covenants and requests of the ACC.
- the ACC may request references, both personal and professional, in order to determine the validity of the applicant's business.

1. Exceptions. Where the Covenants exceed the requirements of the zoning ordinance, the ACC shall have authority to grant exceptions and waivers.

2. Zoning Compliance. Prior to the commencement of construction, all development plans shall in all ways conform to the standards of the zoning ordinance and all necessary approvals and permits for construction shall be obtained.

## ARTICLE VI

### Reversion--Right of First Refusal

1. Reverter. The premises shall revert automatically to the Grantor unless (a) construction of the industrial facility substantially in accordance with the plans, specifications, and plot plans required in Article V of these covenants is commenced within one (1) year from the date of the deed of conveyance; and (b) the industrial facility building and improvements substantially in accordance with said plans, specifications and the plot plans is completed and operational within eighteen (18) months from the date construction is commenced. In the event this reverter shall become operative, the Grantor shall refund to party of the second part any purchase price paid by Grantee for the land, without interest.

2. Right of First Refusal. The Grantor shall have the right of first refusal to purchase the premises, or any part thereof, which is proposed to be conveyed, sold or transferred by party of the second part, for a period of time to expire fifteen (15) years after the date this document is recorded unless sooner or later terminated, as provided in a Right of First Refusal Agreement between the parties hereto which is supplemental to the deed of conveyance.

## ARTICLE VII

### Duration of and Amendments to Covenants

Each of the conditions, covenants, restrictions, and reservations set forth above shall continue and be binding upon the Grantee and upon its successors and assigns for a period of 25 years from the date of recording, and shall automatically be continued thereafter for successive periods of ten (10) years each; provided, however, that the owners of 75 percent of the fee simple property subjected to these Covenants, may release all or any part of the land so restricted from any one or more of said restrictions or may amend said restrictions by executing and acknowledging an appropriate agreement in writing for such purpose and filing the same for record in the Office of the Register of Deeds for Allegan County, Michigan.

It is further provided that within five (5) years of the date of recording of this document, the Grantor may amend the covenants set forth herein after first giving notice to its successors and assigns by certified mail at least fifteen (15) days prior to a hearing for the consideration of the proposed amendments and provided further that the amendments shall be binding upon all

parties unless the owners of ten percent or more of the property held in fee simple, subjected to this document, object to the proposed amendments in writing to the Grantor.

## **ARTICLE VIII**

### Enforcement of Covenants

The Covenants set forth herein shall run with the land and bind the present owner, its successors and assigns, to conform to and observe said covenants as to the use of building sites and the construction of improvements thereon.

The Grantor or owner of any of the above land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or enforce the observance of the restrictions set forth above, in addition to the ordinary legal action for damages; and failure of the Grantor or the owner of any other lot or building sites hereby restricted to enforce any restrictions herein set forth at the time of its violation shall in no event be declared to be a waiver of the right to do so as to any subsequent violation. The violation of these restrictions shall not defeat or render invalid the lien or any mortgage or deed of trust made in good faith and for value.

## **ARTICLE IX**

### Invalidation of Covenants

Invalidation of any one of these Covenants or any part thereof by judgment or court order shall not affect any of the other provisions of the Covenants set forth herein.

IN WITNESS WHEREOF, this document has been executed the day and year first above written by the City of, a Michigan municipal corporation, by its Mayor and Clerk.