

SKYPARK INDUSTRIAL PARK COVENANTS

I. GENERAL PURPOSE{PRIVATE }

The City of Eau Claire, the owners of real property designated as Sky Park and described as:

Part of the NW 1/4, Section 31, Township 27 North, Range 9 West, a part of the SE 1/4-NE 1/4, and part of Government Lot 5, Section 36, Township 27 North, Range 10 West, City of Eau Claire, Eau Claire County, Wisconsin, now platted and known as Lots 1 through 33, Sky Park; and

That part of the NW 1/4-NW 14/, Section 31, T 27 N, R 9 W, and part of the NE 1/4-NE 1/4, Section 36, T 27 N, R 10 W, City of Eau Claire, Eau Claire County, Wisconsin, described as follows:

Commencing at the northwest corner said Section 31; thence north 88°52'45" E. 294.59 ft. along the north line Section 31 to the point of beginning on the easterly right of way line S.T.H. 37; thence south 45°02'49" E. 250.33 ft. to a point on the northerly line of Hamilton Avenue; thence southwesterly and westerly along said northerly line to the easterly right of way of S.T.H. 37; thence northeasterly along said right of way to the point of beginning.

hereby make the following declaration of limitations and restrictions on said real property and hereby specify that such declarations shall constitute covenants applied to the land and subsequent development and which shall bind all parties obtaining interest in said property and their successors.

The City of Eau Claire intends to keep development desirable, uniform, suitable in architectural design and limited to uses specified herein and to achieve a park-like improvement with moderate density and large landscaped areas.

The purpose of these covenants is to provide for development of manufacturing, research, and related compatible uses in an attractive and functional setting. The assurance of protection from incompatible, unsightly, or nuisance uses will serve to maintain property values and to attract quality, labor intensive, light manufacturing and research and development firms to Sky Park.

II. SITE PLAN REVIEW AND APPROVAL

- A. No building permits for development within Sky Park shall be obtained from the City of Eau Claire without first having a site plan submitted to, reviewed and approved by the City of Eau Claire, as required under Chapter 18.30 of the City Code of Ordinances, or as amended.
- B. In addition to the submittal requirements set forth in said chapter, two (2) copies of each of the following shall be submitted to the Director of Community Development of the City of Eau Claire in order to satisfy the site plan submittal requirements:
 - 1. Building elevations showing that all provisions of the Protective Covenants regarding building construction will be met;
 - 2. Fence elevations, plans and other relevant information showing how trash storage areas, mechanical equipment or other facilities (indicate type, quantity) will be screened in accordance with the Protective Covenants;
 - 3. A sketch of all proposed signs, indicating their size, location, height above ground level, materials to be used, and lighting characteristics.
- C. The site plan shall be reviewed by the City Plan Commission using the review criteria set forth in the Protective Covenants and Chapter 18.30 of the City Code of Ordinances, or as amended.
- D. Notice will be provided to all property owners and tenants of Sky Park Industrial Center at least three working days prior to the meeting at which the site plan will be reviewed by the City Plan Commission, with information as to where additional information on the site plan may be obtained. (Site plan review includes any addition which increases the required parking for a use by 2 stalls.)
- E. Prior to the Plan Commission review of the site plan, a review committee made up of four property owners or tenants in Sky Park Industrial Center and one City representative may review and provide comments on the site plan to the Plan Commission based on the criteria of these covenants. (Comments or a letter stating such committee does not desire to review a site plan will be sent to the Plan Commission prior to their next meeting.)

III. PERMITTED USES

A. Those uses permitted in Sky Park Industrial Center are as follows:

1. Light Manufacturing and Production

a) Characteristics

Firms are involved in the manufacturing, processing, fabrication, packaging and assembly of goods. Raw, secondary or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on-site, but if so, are a subordinate part of sales. Relatively few customers come to the manufacturing site.

b) Accessory Activities

Accessory activities may include: offices, cafeterias, employee recreational facilities, warehouses, distribution and day care facilities.

c) Examples

Light manufacturing and production activities may include but is not limited to: processing of food-related products, weaving or production of textiles or apparel; woodworking, including cabinet makers; production of chemical, rubber, plastics, leather, clay, or glass materials or products; production or fabrication of metals or metal products; manufacture or assembly of machinery, equipment, vehicles, paper products and printing, appliances, precision items and other electrical items; production of art work and sign making.

d) Exceptions

This category shall not include manufacturing involving outdoor production, processing, or other activities that would be considered incompatible with light manufacturing and production.

2. Research, Development and Testing Laboratories and Facilities

a)Characteristics

Firms are involved in the research, development or testing of materials, devices or other aspects of products involved in light manufacturing. Firms may conduct independent research into, and may disseminate information for public health, education, or general welfare. Firms may be engaged in providing testing services which are industrial in nature.

b)Accessory Activities

Accessory activities may include: offices, cafeterias, employee recreational facilities, warehouses and day care facilities.

c)Examples

Research, development and testing laboratories and facilities may include but are not limited to: firms involved in the research, development or testing of materials, devices or other aspects of products involved in light manufacturing; non-commercial research organizations; computer software development; testing laboratories such as assaying services, calibration and certification testing, radiation detection, food testing, forensic labs, product testing, pollution testing, seed testing, veterinary testing labs, or x-ray inspection services.

d)Exceptions

This category shall not include research, development or testing which is contracted out and funded for non-industrial activities.

IV. CONDITIONAL USES

- A. The following uses are permitted in Sky Park Industrial Center only upon the granting of a conditional use permit by the City Plan Commission in accordance with Chapter 18.31 of the City Code of Ordinances, or as amended:

1. Warehouse and Distribution

a)Characteristics

Firms are involved in the movement, storage and/or sale of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call

pickups. The category includes wholesale sales which are not open to the general public and where on-site sales are low.

b)Accessory Activities

Accessory activities may include: offices, repackaging of goods, and showrooms or display areas, but generally not for direct sale.

c)Examples

Warehouse and distribution firms may include but are not limited to: warehouses used for furniture and appliance storage; food and hardware distributors; household moving and general freight storage; distribution of industrial items such as steel products or machinery parts; building materials, plumbing and electrical distributors; parcel services; mail order houses; and mini-warehouses.

d)Exceptions

This category shall not include firms that are primarily engaged in retail sales to the general public.

2. Regional or national headquarters office buildings when in conjunction with a permitted use on the site.
 3. Factory retail outlets accessory to and incidental to a permitted on-site manufacturing use.
 4. Day care facility on Lot 2.
- B. The City Plan Commission may grant a conditional use permit with or without conditions only if the following findings are made:
1. The Protective Covenants of Sky Park Industrial Center will be complied with; and
 2. The proposed use will not have a negative impact on existing or potential permitted uses within Sky Park with particular consideration given to impacts on abutting property; and
 3. The proposed use will significantly contribute to the strength, stability, and diversity of the Eau Claire economy through retention of existing jobs, creation of new jobs and/or generation of related "spin-off" development within the community; and

4. The standards for conditional uses listed in Chapter 18.31.010, or as amended, can or will be met.

V. PROHIBITED USES

- A. The following uses shall not be allowed in Sky Park Industrial Center under any circumstances:
 1. Any use that produces substances, conditions or elements in such a manner or amount as to be in violation of any applicable federal, state or local regulation or as to constitute a nuisance to adjacent sites or areas. These substances, conditions or elements include, but are not limited to: noise, smoke, odor, heat, glare or industrial waste.
 2. Uses which because of the sensitive nature or bulk of the product handled would constitute a hazard or be otherwise incompatible with the light manufacturing and research uses in Sky Park Industrial Center, including but not limited to:
 - a) gasoline and oil production, distribution, or storage, except for storage of reasonable amounts for primary uses on-site;
 - b) ammunition, ordnance and explosives production, distribution or storage;
 - c) insecticide and pesticide production, distribution or storage, except for rodent or insect control on-site;
 - d) asphalt and concrete batching or ready-mix plants;
 - e) saw mills and lumber yards.
 3. Non-manufacturing uses which are not accessory to manufacturing, including but not limited to: agricultural, residential, retail trade, or service uses.

VI. INTERPRETATION OF PROVISIONS

In cases where it is unclear as to whether a particular proposed use is a permitted, conditional or prohibited use or where uncertainty exists as to the meaning or application of any part of these provisions, an interpretation shall be made by the City Plan Commission.

VII. LOT ONE AND LOT TEN

- A. Lot One and Parcel #15-1078 located north and east of W. Hamilton Avenue and Hwy. 37, the former landfill site, shall be initially maintained as open space. Possible development of this lot for more intensive recreational use may be paid for collectively by occupants of Sky Park through a voluntary agreement with the City. The City reserves the right to sell or develop Lot One and Parcel #15-1078 as it sees fit in the future.
- B. Lot Ten, situated between Lot One and an existing commercial bank building, shall be exempt from the Permitted Uses and Conditional Uses sections of these covenants. The City will seek a use of Lot Ten, which is compatible with both the existing bank and eventual development in the industrial park. Certain provisions of the covenants regarding exterior building materials, parking, and other details of the site plan may be waived by the City Plan Commission in order to secure a suitable development that makes a smooth transition between the bank and the industrial park. All other lots are regulated strictly by these covenants and other applicable City ordinances.

VIII. LOT COVERAGE, YARD SETBACKS

- A. Regardless of yard requirements, the maximum building coverage of any parcel of land shall not exceed sixty percent (60%) of the gross area of the parcel upon which such building or buildings are situated.
- B. Minimum building and structure setbacks from all parcel boundaries shall be 20 feet, except from street right-of-ways where the minimum setback will be 25 feet. Sign setbacks are regulated separately under Signs below.
- C. In the area between street right-of-ways and the actual building lines (extended) fronting on streets, only visitor parking, drives, landscaping, and signs will be allowed. Actual building lines shall establish the setback lines for other uses such as employee parking, and loading.

IX. LANDSCAPING AND OPEN SPACE

- A. Landscaping shall be completed by the owners and occupants thereof with lawn, trees, shrubs, flowers, and the like within twelve months of the issuance of a certificate of occupancy, in accordance with the approved site plan.

- B. At least 10 percent of all parcels shall be set aside for and maintained as landscaped open space areas located where visible from the adjacent public street(s).
- C. In cases where any front yard or side yard fronting on a street is used for parking or a driveway, at least five (5) feet on each side of the paved area shall be landscaped. As an option, the area between the parking and building need not be landscaped, if ten feet on the street side of the parking area is landscaped.
- D. All landscaped, open space portions of any parcels shall be continually maintained by the owners and occupants in accordance with the approved site plan.

X. MAINTENANCE

- A. All land shall be maintained and kept free of noxious weeds, rubbish and debris by the property owner. It shall be the responsibility of the property owner to keep the grass mowed in the city right-of-way abutting the owner's property up to the curb/street pavement, as well as on the private portion of the property.
- B. Property owners shall maintain designated buffer areas at the rear of lots on the perimeters of the industrial park, as developed by the City. No alterations of the buffer area landscaping shall be allowed except as shall be approved by the City Council of the City of Eau Claire.
- C. The City shall perform minimum maintenance and mowing of all unsold lots, Lot One and Parcel #15-1078, the former landfill site. More intensive maintenance or development of Lot One for mutual use by Sky Park tenants shall be paid for collectively through special assessment, a Sky Park property owner's association or other means.

XI. BUILDING CONSTRUCTION, SITE ALTERATION, OUTSIDE ACTIVITIES

- A. No building construction, site alteration, or outside activity shall commence prior to the approval of a site plan and issuance of a building permit by the City of Eau Claire. All construction, site alteration and outdoor activities must be in accordance with the approved site plan. Any material modifications or additions to any building, the site or outside activities must first be reviewed and approved in the same manner as the original site plan.
- B. All structures and use areas shall be designed, constructed, landscaped, operated and maintained to be compatible with abutting and surrounding structures and uses.

XII. BUILDINGS

- A. To establish a standard of quality and maintain architectural integrity, all exterior walls facing streets within Sky Park are to be faced with brick, decorative masonry or other material of equal architectural appeal from finished grade to roof level. Standard cinder or concrete block shall not be considered sufficient for this purpose. A suitable amount of metal or other trim material will be allowed as approved in the site plan. Steel buildings must have masonry exteriors facing streets, while the steel walls not facing streets must be coated with an earth tone colored paint.

Pole type buildings utilizing wood columns without foundations are prohibited for main buildings and accessory buildings.

Buildings will be designed to enhance the existing development within Sky Park Industrial Center and to be compatible in building design, orientation of structures and roofing shape and materials with existing buildings in the park. New development shall have compatible building mass, including height and lot coverage, and lot size and configuration with the existing development within the park.

- B. The owner shall, within 12 months of the date of a lot purchase, commence construction of a plant or facility and shall have the same ready for occupancy for a permitted use within 24 months of the date of purchase of said lot, unless a formal extension is requested of and granted by the City Council. If no extension is granted or no construction commences, the City reserves the right to repurchase the land at its original cost plus the cost of any subsequent improvements, less any commission paid on original sale.
- C. From and after the date of substantial completion of improvements upon a lot in accordance with these covenants, said lot shall be free and clear of, and no longer be encumbered by, the provisions of this paragraph.
- D. An affidavit signed by the City Manager of the City stating that said improvements have been substantially completed shall be sufficient evidence of substantial completion thereof for the purposes of this section entitled "Buildings".
- E. All buildings on lots along the upper ridge (north portion of property overlooking the bluff) must be oriented toward and front on the internal street (International Drive).
- F. All structures shall be protected with automatic sprinklers or some other automatic fire extinguishing system reviewed and approved by the City's Fire

Prevention Division. Yard hydrants, where necessary, shall be required to be placed as directed by the Fire Department at the owner's expense.

XIII. NON-BUILDING SITE ELEMENTS

- A. All operations shall be carried on within fully enclosed buildings and no outside activities shall be carried on except the parking of motor vehicles and the loading or unloading of motor vehicles.
- B. All inventory or supply loading and unloading must be in the rear yard, or side yards behind established setback lines. No loading dock, berth or other such facility shall be located directly on any public street frontage, nor shall it be located so as to make it necessary for vehicles to be within the established setback lines from streets during loading/unloading operations.
- C. All walks, parking areas and loading zones shall be paved to provide dust-free, all-weather surfaces and maintained in good condition.

XIV. PARKING

- A. Customer and visitor parking may be permitted in front or side yards facing streets, not closer than 5 feet from the street right-of-way, up to a maximum of 10 spaces.
- B. Employee parking shall be in the rear yard or side yard behind established setback lines. The number, size, dimensions and layout of parking spaces shall be approved as part of the site plan. Stall markings shall be provided for all parking.
- C. No employee parking shall be permitted on the public streets within the industrial park. Parking on the streets between the hours of 12 midnight - 5:00 a.m. shall be prohibited.
- D. The width and location of all driveways and curb cuts shall be regulated by the approved site plan. Lots abutting Continental Drive and/or International Drive shall be permitted vehicle access only to these drives, unless otherwise approved in the site plan.
- E. Where possible, common employee parking between adjacent landowners shall be encouraged and provided for in the site plan. Where possible, provision may also be made for sidewalks and pedestrian pathways on private property to provide pedestrian interconnections among the various users of the industrial park.

XV. FENCES

- A. No fence may project beyond the building line (extended) facing the street. Material may include brick, decorative masonry or wood a maximum of eight feet in height unless otherwise approved in the site plan. Fences must be kept in good repair and wood must be kept painted or stained. Fences screening trash storage areas, mechanical equipment or other facilities shall be opaque.
- B. Provisions must be made for access by Fire Department apparatus to all sides of any building.

XVI. SIGNS

- A. One freestanding, monument type sign per business shall be allowed. The total size of the freestanding sign shall not exceed 70 square feet. Maximum height of all monument signs permitted shall not exceed 6 feet above ground level. These signs must be set back a minimum of 15 feet from street right-of-ways due to utility easements.
- B. One exterior wall sign per business shall be allowed. The total size of the sign shall not exceed 10 percent of the area of the wall upon which the sign is erected. Wall signs shall be fixture signs.

Signs painted directly on the surface of the wall shall not be permitted.

- C. No signs shall project above the top of the highest exterior wall of the building. No traveling, animated or flashing light signs shall be allowed within Sky Park property.
- D. Other provisions of the Eau Claire Sign Code, as amended, shall apply to all signs used in Sky Park.

XVII. UTILITIES

All utilities must be placed underground.

XVIII. DRAINAGE SYSTEM

- A. No one shall in any way disturb the functioning of the manmade or natural drainage system of Sky Park in any manner, except with the express, written permission of the City Engineer.
- B. All portions of any lot shall be designed, graded, constructed and maintained so as to properly discharge storm water runoff as set forth on the approved site plan.

XIX. PRIVATE WELLS

Wells for outside watering and industrial use may be approved within the standards developed by the State of Wisconsin and the City of Eau Claire.

XX. INDUSTRIAL WASTE INTO SANITARY SEWERS

- A. Industrial pre-treatment of effluents from their source will be required in accordance with uses and standards established by the City of Eau Claire in conformance with the Clean Water Act and regulations of the Wisconsin Department of Natural Resources and the Environmental Protection Agency.
- B. No industrial process shall be permitted that would discharge industrial wastes into the City's sewage treatment system at a rate or of a composition beyond the capacity of the system to treat it satisfactorily.

XXI. RESALE OF VACANT LAND/OPTIONS

- A. In the event any purchaser of land from the City of Eau Claire elects to sell any portion thereof which is not being used in connection with the business or industry of purchaser, or which the purchaser desires to sell separate and distinct from any sale of the business or industry being conducted by purchaser the same shall first be offered for sale, in writing, to the City of Eau Claire at the price per acre paid for such by purchaser, together with the cost of any improvements thereon paid for by purchaser, less any commission paid on original sale.
- B. The City shall have 90 days from date of receipt of such offer to accept or reject the same, unless an extension of time is mutually agreed upon and set forth in writing. Acceptance or rejection of such offer shall be indicated by resolution adopted by the City Council of the City of Eau Claire.
- C. In the event of acceptance of such offer by the City, conveyance shall be by warranty deed free and clear of all liens or encumbrances created by act or default of purchaser.
- D. If the City of Eau Claire fails to act on such offer of sale within 90 days from receipt thereof as aforesaid or rejects said offer, purchaser may then sell said lands to any person, firm or corporation and the City shall have no further interest therein, except that any use of said lands by any subsequent purchaser shall be subject to applicable City codes and these Protective Covenants, ordinances, restrictions and regulations of the city, as amended, relating to the use of said premises.
- E. Options to buy adjoining lots for anticipated expansion shall be available and valid for a maximum of one year and shall be secured by a deposit of 2 percent of the total lot price. (Existing options will be extended at their

existing rate through May 1, 1998.) Final purchase price of optioned lots would be for current market value at time of actual, full purchase.

- F. From and after the date of substantial completion of improvements upon a lot in accordance with these covenants, said lot shall be free and clear of, and no longer be encumbered by, the provisions of this section entitled "Resale of Vacant Land/Options".
- G. An affidavit signed by the City Manager of the City stating that said improvements have been substantially completed shall be sufficient evidence of substantial completion thereof for the purposes of this section entitled "Resale of Vacant Land/Options".

XXII. AMENDMENT AND OWNERSHIP

- A. Each lot shall be conveyed subject to the above restrictions and covenants, all of which are to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from the date these Protective Covenants are recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten years each, unless an instrument signed by the then owners of a majority of the acreage in said subdivision, together with the approval thereof by the City Council of the City of Eau Claire has been recorded amending the term or duration of said covenants.
- B. These covenants may be changed, modified or amended at any time, in whole or in part, by the owners of a majority of the acreage in the subdivision, together with the approval of the Eau Claire City Council. In determining ownership of the majority of the acreage, mortgagees and the holders of other security devices who are not in possession, lessees, tenants, and option holders shall be excluded for the purposes of voting on changes to these Protective Covenants.
- C. The ownership of a majority of the acreage shall be determined by taking the total number of square feet owned and comparing the resulting amount to the total number of square feet, excluding public streets, within the total development.
- D. The within covenants and restrictions may be modified and amended only upon the recording of an instrument to said effect duly signed by the then owners of a majority of the acreage in said industrial park together with the approval thereof by the City Council as evidenced by a resolution duly adopted by a majority of all the members of the City Council.
- E. The enforcement of the restrictions and covenants contained in these Protective Covenants shall be by proceedings at law or in equity against any

person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Such proceedings may be commenced by any owner or owners of lots in said industrial park or by the City of Eau Claire.

- F. Invalidation of any one of these covenants or restrictions contained within these Protective 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.

XXIII. REQUIREMENT OF ZONING AMENDMENT

It is recognized and understood that the substantive provisions of these Protective Covenants have also been adopted by the City of Eau Claire as zoning restrictions and regulations pertaining to Sky Park Industrial Center. Therefore, in the event these Protective Covenants are modified or amended, in order for such modification or amendment to be fully effective and enforceable, a similar amendment to the zoning regulations governing the Sky Park Industrial Center Planned Development shall be adopted.

XXIV. EFFECTIVE DATE

The Protective Covenants shall be in full force and effect on December 8, 1982 and as amended on January 10, 1989, September 11, 1990, February 22, 1994 and May 28, 1996.

XXV. PRIOR COVENANTS SUPERSEDED

The Covenants contained herein shall supersede the Covenants contained in the document entitled "Sky Park Industrial Center Protective Covenants - December, 1982" recorded as Document No. 524955 in Volume 599 of Records, Page 360, in the office of Register of Deeds for Eau Claire County.

Don T. Norrell, City Manager

Subscribed and sworn to before me this _____ day of _____, 1996.

Notary Public, Eau Claire County, Wisconsin
My commission _____.

This instrument drafted by
Ted Fischer, City Attorney,
City Hall, Eau Claire, WI 54701