

**DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS**

RE: See attached Exhibit A.

Return To:

Paul A. Johnson
Boardman & Clark LLP
PO Box 256
Lodi, WI 53555

211.0032.0000

Parcel Identification Number

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

**KASTER-MCCLAIN BUSINESS PARK
CUBA CITY, WISCONSIN**

WHEREAS, the City of Cuba City, Wisconsin (“City”) is owner of all of the lands described on the attached Exhibit A (“the Property”); and

WHEREAS, the Property is within the City of Cuba City, Lafayette County, Wisconsin; and

WHEREAS, it is deemed proper to impose upon all of the above described Property certain restrictions, reservations, limitations and covenants, as hereinafter set forth for the development of the Property as a part of the Kaster-McClain Business Park (the “Park” or “Business Park”) to insure the proper use and appropriate development and improvement of each building site therein; to protect the environment in this Business Park which will include industrial and commercial uses; to guard against the erection therein of structures built of improper or unsuitable materials; to require conformity; to control the development of said Property as a business park, permitting proper setbacks from the streets, adequate free space between structures, adequate parking, and in general, providing a high quality of improvement on said Property so as to insure that each building site will not adversely affect the general plan for physical development of the Business Park nor adversely affect the health or safety of residents or workers in said area, nor be detrimental to the use or development of other properties in the Kaster-McClain Business Park.

NOW THEREFORE, IT IS HEREBY DECLARED AND AGREED, that the following restrictions, reservations, limitations and covenants be and the same hereby are adopted, and that all of the Property within the Business Park, except the public highways, be subject thereto, as follows:

ARTICLE I

THE DECLARANT AND COVENANT COMMITTEE

- 1.1 Declarant.** The Declarant, shall at all times hereafter consist of the Common Council of the City of Cuba City, Grant and Lafayette Counties, Wisconsin.
- 1.2 Covenant Committee.** The Covenant Committee (“Committee”) shall consist of the members of the City’s Community Development Commission as established by section 1.06(6) of the City of Cuba City Code of Ordinances.

ARTICLE II

LAND USE

- 2.1 Approved Uses.** No land within the Park shall be used for any purpose other than

allowed as a permitted or conditional use for the specific zoning district assigned to each lot as provided in the City Zoning Ordinance in force and effect on the date of this document and as the same may be hereafter from time to time amended. The Declarant reserves the right to limit or restrict the use of a particular lot or lots under the provisions of Article III.

- 2.2 **Land Speculation.** It is the intent of the Declarant to not to sell lands in the Business Park to parties for speculative or investment purposes.

ARTICLE III

PLANS AND SPECIFICATIONS

- 3.1 **Approval Required.** No buildings, fence, wall, sign, advertising device, roadway, loading facility, outside storage facility, parking area, site grading, planting, landscaping, facility for industrial waste or sewage disposal, nor any other improvement shall be commenced, erected or constructed, nor shall any addition thereto or change or alteration therein be made (except to the interior of a building), nor shall any change in the use of any premises be made, until the plans and specifications therefore, showing any nature, kind, shape, heights, materials, color scheme, lighting and location on the lot of the proposed uses or change in the use of the premises, shall have been submitted to and approved in writing by the Committee and the Director of Public Works. A Building Permit and/or Zoning Permit must be obtained from the City for any such activities. A copy of plans and specifications as finally approved shall then be submitted to the Common Council. The Common Council shall have the right to approve or deny any such plans or specifications or proposed use of the premises for any reason which the Common Council, in its sole discretion may deem in the best interests of the Park and the Owners or lessees or prospective owners or lessees of other properties therein.
- 3.2 **Time Limit.** Failure of the Common Council to act upon the plans and specifications submitted within sixty (60) days after submission shall constitute an approval of such plans.
- 3.3 **Minimum Lot Size.** No site shall be less than one (1) acre in area. The Common Council may waive this requirement if it is determined the proposed improvement would be in the best interests of the Park and the Owners or lessees or prospective owners or lessees of other properties therein.
- 3.4 **Minimum Improvements.** All construction within the Park shall meet or exceed the minimum investment criteria (initial construction value of improvements, not including land) of \$175,000/acre as a condition of site purchase and development. The Common Council may waive this requirement if it is determined that the proposed improvement would be in the best interest of the Business Park or the owners or lessees of other properties therein.

3.5 Construction Deadline. The general planning and submission of plans for Covenant Committee review of a proposed building is required to be completed within twelve (12) months from the date of sale of any land within the Business Park. The building construction shall be completed within twenty-four (24) months after the purchase date, unless the Common Council approves an extension. All lot purchasers are required to sign a separate Agreement for Sale of Real Estate Form.

In the event Buyer has not taken the action specified in the above paragraph, Declarant shall have the option to buy the above-described lot at a purchase price equal to the amount paid for the land less 50% of the purchase price less any commissions or expenses paid by the City in connection with the sale to the Buyer. In no event shall the total commissions and expenses charged under this provision exceed \$1,000.00. The Declarant is not liable to reimburse buyer for any improvements made to the lot following the initial purchase.

3.6 Other Regulations. Construction and alteration of all improvements in the Park shall be in accordance with the requirement of all local, county, state and federal rules, regulations and laws.

3.7 Excess Soil. No soil excavated or dug on the Park Property shall be removed from the area of the Park, and if the owner of any lot has any excess of such soil excavated during construction, it shall be deposited at such location within the Park as the Committee shall in writing designate. However, the owner of the lot from which such soil is removed shall not be responsible for the leveling thereof on any area so designated for depositing the excess soil beyond or outside of the boundaries of the owner's lot. Soils which are not needed in the Park may be removed upon the written approval of the Committee on a case by case basis.

ARTICLE IV

DEVELOPMENT STANDARDS

4.1 Landscaping.

4.1.1 All ground, with the exception of walks, drives, parking facilities and service areas, will be landscaped with permanent lawn and ground covers, shrubs and trees, in a manner that has been approved by the Common Council.

4.1.2 All landscaping shall be completed within twelve (12) months of the issuance of an occupancy permit.

4.1.3 No more than seventy percent (70%) of any lot shall be covered with buildings, parking, or other impervious surfaces. Exceptions to this restriction may be granted by the Common Council based on individual circumstances.

4.1.4 Undeveloped areas proposed for future expansion shall be maintained in a weed-

free condition and shall be covered with lawn or other ground cover.

4.2 Parking.

- 4.2.1 All present and future vehicular parking, including trucks, trailers, employee and visitor parking shall be provided on the premises and shall comply with all the provisions of the applicable City zoning regulations.
- 4.2.2 All parking areas are to be paved as to provide dust-free; all weather surfaces within twelve (12) months of receiving an occupancy permit, unless the Committee approves an extension.
- 4.2.3 The preferred location for parking is within the side or rear building yards. If parking is provided in the front yard, then additional landscaping of a minimum of 10 feet will be required between the parking area and the street right-of-way.

4.3 Buildings.

- 4.3.1 All elevations of the building shall be designed in a consistent and coherent architectural manner and of steel, cement block, or wood frame construction. The Common Council may waive this requirement based on the recommendation of the Committee if it is determined the proposed improvement would be in the best interest of the Park, the owners or lessees, or prospective owners or lessees of other properties therein.
- 4.3.2 The exterior appearance of the building shall not be modified from what was approved, unless and until the Committee approves the color and/or material changes in writing.
- 4.3.3 Architectural review by the Committee will take into account the appearance of all buildings, parking areas and storage areas as viewed from any street or State Highway 80.

4.4 Loading.

- 4.4.1 The preferred location for loading and staging areas is on the side or rear of the building. If loading is provided in the front of the building, then additional landscaping (as defined by the Committee) may be required between the loading/staging area and the street right-of-way.
- 4.4.2 Street side loading shall be allowed provided the loading dock is set back a minimum of seventy (70) feet from the street right-of-way line. No loading dock shall be located so as to make it necessary for vehicles to be within the street right-of-way during loading/unloading operations.

4.5 Outdoor Storage.

- 4.5.1 No outdoor storage of products, materials or equipment shall be allowed between any public streets, including those inside and outside of the Park, and the building line of the principal building extended to the side and rear property lines.
- 4.5.2 All outdoor storage shall be visually screened from access streets, State Highway 80 and adjacent property. Said screening shall consist of solid fences and walls which form a complete opaque screen a minimum of six (6) feet tall with a maximum of ten (10) feet tall. Outdoor storage consisting of semi-trailers does not require a solid fence or wall, but shall be screened according to the requirements described in Section 4.1.1. Fencing must be consistent with all applicable zoning guidelines.
- 4.5.3 No materials, supplies or products shall be stored or permitted to remain on the premises outside a permanent structure without the prior written consent of the Committee.
- 4.5.4 All outdoor refuse collection areas shall be visually screened from access streets, State Highway 80 and adjacent property by a complete opaque screen. No refuse collection areas shall be permitted between a street and the building line.
- 4.5.5 The exterior storage of boats, campers, vehicles, and other materials or products not associated with the permitted use of the premises on which they are located is prohibited.

4.6 Signage.

- 4.6.1 A scale drawing of any sign, trademark or advertising device to be used on any lot or the exterior of any building or structure shall be submitted to the Committee in triplicate for review and final approval by the Common Council. Normally, the occupant's trademark and/or trade name may be displayed on the building in the manner in which they are generally used by the occupant.
- 4.6.2 All exterior signage must meet the requirements of the City zoning ordinance, and shall receive a building permit before being installed.

4.7 Fences.

- 4.7.1 Fences are allowed in the Park subject to approval of the Committee and the following restrictions.
 - a) No fence shall project beyond the building line (extended) facing a street.
 - b) All fences shall comply with the provisions of section 17.51 of the City Zoning Code. No fence shall be constructed with barbed or razor wire.
 - c) All fences shall be maintained in good condition, including their painted or stained condition.

- d) Provisions must be made for access by fire department apparatus to all sides of any building.

4.8 Storm Water Management and Erosion Control.

4.8. Methods and facilities for Storm Water Management and Erosion Control shall be the responsibility of the owner of the lot for any improvements to the lot that affects Storm Water Management and Erosion Control from the time in which the lot is acquired. The City shall determine the Standards to be met for Storm Water Management and Erosion Control and, at a minimum, methods and facilities shall meet the Wisconsin Department of Natural Resources Chapter NR 151 (Runoff Management) and Chapter NR 216 (Storm Water Discharge Permits). The City shall require that any improvements to the property that affect Storm Water Management and Erosion Control be reviewed by the City or its designated representative, even in the case where the improvements affect less than 1 acre of area. Owner shall prepare Plans and Specification for City review and receive City approval prior to commencing construction and installation of Storm Water Management and Erosion Control improvements.

If the City deems that the Storm Water Management and Erosion Control methods and facilities would better serve more than one lot in the Park, or a certain region of the Property as Regional Improvements, the City shall determine the costs associated with the improvements, including design and construction, complete the construction of the regional improvements at City expense and then may assess the appropriate costs to the owners affected by the regional improvements.

4.8.2 Owner and its successors and assigns shall be responsible to repair and maintain the Storm Water Management measures located on the lot in good condition and in working order and such that the measures comply with approved plans on file with City. Said maintenance shall be at the owner's sole cost and expense. Owner will conduct such maintenance or repair work in accordance with all applicable laws, codes, regulations, and similar requirements.

4.8.3 If owner fails to maintain the Storm Water Management and Erosion Control measures as required, then City shall have the right, after providing owner with written notice of the maintenance issue and having given thirty (30) days to comply with the City's maintenance request, to enter the lot in order to conduct the maintenance specified in the maintenance notice. City will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with owner's use of the lot. All costs and expenses incurred by the City in conducting such maintenance may be charged to the owner of the property by placing the amount on the tax roll for the property as a special charge in accordance with Section 66.0627, Wis. Stats.

ARTICLE V

MAINTENANCE

- 5.1 **Property Maintenance.** Each lot owner shall at all times keep the premises, buildings, improvements and appurtenances under their control in a safe, clean, neat and sanitary condition and shall keep all grass, trees, shrubbery in good appearance at all times and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from the lot.
- 5.2 **Construction Debris.** During construction, it shall be the responsibility of each lot owner to ensure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner.
- 5.3 **Trash Burning.** No burning of any nature is permissible within City limits.
- 5.4 **Undeveloped Land.** The Declarant agrees to maintain all undeveloped land owned by it within the Park in a manner compatible with the provisions of this Article and City Ordinances.
- 5.5 **Erosion Control.** The lot owner and prime contractor(s) shall control soil and water loss so as to prevent damage to other properties and structures in the industry park and beyond.

ARTICLE VI

PERFORMANCE STANDARDS

- 6.1 Any use in the Business Park shall comply with the following regulations:
 - 6.1.1 **Noise.** At no point on the Business Park boundary nor beyond property lines of individual lots within the district shall the sound level of any individual operation or level exceed the limits shown in the following table:

Frequency Cycles Per Second	Maximum Sound Level-Decibels	
	7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
0 to 75	70	67
75 to 150	67	62
150 to 300	59	54
300 to 600	52	47
600 to 1200	46	41
1200 to 2400	40	35
2400 to 4800	34	29
Over 4800	32	27

Frequencies and sound levels shall be measured with an Octave Band Analyzer and Sound Level Meter, which comply with the USA Standards prescribed by the United States of America Standards Institute.

All Noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, heat frequency, impulse character, periodic character or shrillness.

6.1.2 **Air Contaminants.** No smoke, soot, flyash, dust, cinders, dirt, noxious or obnoxious acids, fumes, vapors, odors, toxic or radioactive substance, waste or particulate, solid, liquid or gaseous matter shall be introduced into the outdoor atmosphere alone or in any combination, in such quantities and of such duration that they would interfere with the safe and comfortable enjoyment of life or property or any use permitted in this Business Park.

The limits on emission for particular contaminants shall be determined and enforced as provided for under the NR 154.02, Wisconsin Administrative Code.

6.1.3 **Liquid and Solid Waste.** Any disposal of wastes on the Property shall be done in such a manner that it will conform to the regulations of this section. No wastes shall be discharged into a storm sewer or roadside ditch or drainage area except clear and unpolluted water. All liquid waste disposal shall be in conformance with Sections SPS 381-385 of ATCP 93, Wisconsin Administrative Code.

6.1.4 **Electrical Emission.** There shall be no electrical emission beyond the property line which would adversely affect any other use or adjacent property owners to the Business Park.

6.1.5 **Glare and Heat.** There shall be no reflection or radiation, directly or indirectly, or glare or heat beyond the property line if it would constitute a nuisance, hazard or be recognized by a reasonable person as offensive. Provided, however, that nothing in this section shall prohibit night illumination of a lot within the Park.

6.1.6 **Vibration.** There shall be no operation or activity which would cause ground transmitted vibrations in excess of the limits set forth below beyond the boundary of this Park, under any conditions, nor beyond the property line if it would adversely affect any other use within the Park.

Frequency	Maximum Permitted Displacement
Cycles Per Second	Along Subdivision Boundaries (in inches)
0 to 10	0.008
10 to 20	0.005
20 to 30	0.002
30 to 40	0.002
40 and over	0.001

ARTICLE VII

WAIVER OF INVALIDATION

- 7.1 Any failure to enforce any provision of these covenants and restrictions in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Park or of any other provisions of these covenants and restrictions. Invalidation by Court adjudication of any provision of these covenants and restrictions shall not affect the validity of any other provision, and all other provisions thereof shall remain in full force and effect.

ARTICLE VIII

COVENANTS RUN WITH LAND; ENFORCEMENT

- 8.1 The foregoing covenants and restrictions shall run with, bind and inure to the benefit of all of the lands in the Park, whether hereafter conveyed by the owners thereof, including the Declarant, or any one of them, as such owners, or retained by the Declarant. All persons who own any lands in the Park covenant and agree to hold such land subject to all the terms, provisions and conditions of these covenants and restrictions and that any and all sales, leases, mortgages or other dispositions of such land or any part thereof, shall be subject to these covenants and restrictions. The Declarant reserves the right, however, from time to time hereafter, to delineate, plat, grant or reserve within the Park such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as Declarant may deem necessary or desirable for the development of the Park (and from time to time change the location of the same) free and clear of these restrictions and covenants, and to dedicate the same to public use or to appropriate public utility corporations.
- 8.2 **Enforcement.**
- 8.2.1 Said covenants and restrictions shall be enforceable by the Declarant or by any of the owners of land within the Park, and their heirs, personal representatives, successors or assigns. Only the Declarant shall have the right to exercise the discretionary powers herein reserved to the Declarant.
- 8.2.2 Prior to any enforcement action by the Declarant, the Declarant shall first refer any complaint or alleged violation to the Covenant Committee for review and investigation. The Covenant Committee shall investigate the complaint or alleged violation, and if the Covenant Committee determines that a violation of these Covenants has occurred, the Covenant Committee shall give the land owner 30 days after delivery of written notice, or in the alternative, 30 days after mailing of such notice by registered or certified mail postage prepaid to the recorded owner of such premises at his or its last known address, the opportunity to cure said violation or breach. If the violation or breach has not been cured following 30

days' notice, the Covenant Committee shall make recommendations to the Declarant as to further enforcement. The Declarant shall then decide if enforcement action is warranted.

- 8.2.3 Violation of any of said restrictions or conditions, or breach of any covenant or agreement herein contained, shall give the Declarant or its assignees, in addition to all other remedies, the right (but not the obligation) to enter upon the land as to which such violation or breach exists and summarily to abate and remove any erection or thing or correct any condition that may constitute such violation or breach at the expense of the then owner of such land, which expense shall be a lien on such land enforceable in equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by registered or certified mail, postage prepaid, to the recorded owner of such premises at his or its last known address.

ARTICLE IX

SUBDIVISION OF LAND

- 9.1 Lots or sites within the Park shall not be further subdivided without the prior written approval of the Declarant. Any division not only shall comply with applicable government regulations, but also shall not create a lot which is not readily adaptable to these Covenants.

ARTICLE X

MISCELLANEOUS PROVISIONS

- 10.1 The term shall commence on the date that these Covenants are established for the Property, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, these Covenants may be terminated or amended by recording with the Lafayette County Register of Deeds, a written instrument of termination or amendment signed by a two-thirds majority of all of the owners of the Property, and the approval of Declarant. No termination or amendment to these covenants shall be made without the express written consent of the Cuba City Common Council, obtained at a meeting of the Common Council duly called and held.
- 10.2 **Notices.** Any notice, request or demand required or permitted under these Covenants shall be in writing and shall be deemed given when personally served or three (3) days after the same has been deposited with the United States Post Office, registered or certified mail, return receipt requested, postage prepaid. Any party may change its address for the receipt of notice by written notice to the other.

10.3 Governing Law. These Covenants shall be governed and construed in accordance with the laws of the State of Wisconsin.

The Declarant has executed this instrument on this _____ day of _____, 2018.

CITY OF CUBA CITY

By: _____
Thomas Gile, Mayor

Attest: _____
Jill Hill, Clerk/Treasurer

STATE OF WISCONSIN)
)ss.
COUNTY OF GRANT)

Personally came before me on this _____ day of _____, 2018, the above-named Thomas Gile and Jill Hill, to me known to be the persons who executed the forgoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission expires: _____

This instrument was drafted by:
Bob Jones, Cuba City Economic Development Director
108 N. Main Street
Cuba City, WI 53807
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