

**WAIVER OF RESTRICTIONS**

Document Number

Fox Valley Investment Properties, LLC, is the owner of a 6.59 parcel of land in the City of Appleton's Northeast Business Park Plat No. 2 with a legal description as detailed on attached Exhibit A, hereinafter "Parcel". The Parcel is subject to the Declaration of Covenants and Restrictions recorded in the Outagamie County Register of Deeds Office on November 9, 2001 as Document No. 1435667, attached hereto as Exhibit B, hereinafter "Restrictions".

Fox Valley Investment Properties, LLC, now seeks to convey the Parcel to the Luther Group, LLC, or its designated assignees, for the purposes of development of the Parcel.

The City of Appleton hereby unconditionally and irrevocably releases Fox Valley Investment Properties, LLC, and their successors in interest and assigns from paragraphs 13 and 14 of the Restrictions.

This Wavier of Restrictions applies solely to the Parcel.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**City of Appleton, a Wisconsin Municipal Corporation**

By: \_\_\_\_\_

By: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Wisconsin )  
                               ) ss  
Outagamie County )

Personally came before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above named \_\_\_\_\_ and \_\_\_\_\_, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

This instrument was drafted by:  
James R. Walden, Jr., SBN 1009136  
Walden, Neitzke & Kuhary, S.C.  
707 W. Moreland Blvd, Suite 9  
Waukesha, Wisconsin 53188  
Ph: (262) 547-5517  
Email: jwalden@waldenlaw.net

Recording Area

Record and Return to:  
City of Appleton - City Attorney's Office  
100 North Appleton Street  
Appleton, WI 54911-4799

311651051

Tax Key Number

EXHIBIT A

LEGAL DESCRIPTION

Lot 1 of Certified Survey Map No. 7369, recorded June 14, 2017, in Volume 44, Page 7369, as Document No. 2106456, being a part of Lot One (1), Certified Survey Map No. 5263, being part of Northeast 1/4 of the Northwest 1/4 of Section Eighteen (18), Township Twenty-one (21) North, Range Eighteen (18) East, City of Appleton, Outagamie County, Wisconsin.

Tax Parcel No. 311651051

EXHIBIT B

**1435667**

**Document Number**

**Declaration of Covenants  
and Restrictions**

**OUTAGAMIE COUNTY  
RECEIVED FOR RECORD**

**NOV - 9 2001**

**30**

**AT 1:00 CLOCK A.M. P.M.  
JANICE FLENZ  
REGISTER OF DEEDS**

**Record and Return to:**

**City of Appleton  
City Attorney's Office  
100 North Appleton Street  
Appleton, WI 54911-4799**

**11  
2900**

## DECLARATION OF COVENANTS AND RESTRICTIONS

### APPLICABLE TO ALL PROPERTIES SOLD IN NORTHEAST BUSINESS PARK NO. 2

This conveyance is made subject to the following conditions, covenants, and understandings which shall be binding upon the vendee and his/her heirs, successors, and assigns:

1. **Setbacks:**

- A. **Front Yard:** No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street. In the case of corner lots, both forty (40) foot setbacks will apply.
- B. **Side and Rear Yards:** Minimum side and rear yards shall be twenty-five (25) feet.
- C. **State Highways:** A fifty (50) foot building setback shall be observed along U.S.H. 41 and U.S.H 441.

2. **Land Use:**

- A. **Restrictions on Use.** The Restricted Parcel shall be developed and used solely for the following purpose and for no other purpose:
  - 1. Vocational and rehabilitation facilities (packaging type or light manufacturing [as defined below]; no retail: businesses that employ disabled or handicapped individuals in a packaging or light manufacturing process.
  - 2. Educational and training centers (up to 50,000 square feet): centers used for employee or customer training, e.g., computer training (but excluding, for example, training to operate motor vehicles or heavy machinery). All training activities to be limited to the confines of the building.
  - 3. Offices: e.g., insurance claims, medical, legal and leased business offices and services.
  - 4. Professional services: e.g., doctors', lawyers' and accountants' offices.
  - 5. Printing: e.g., commercial printing facilities, newspaper presses.
  - 6. Wholesale storage: interior storage of non-volatile goods, such as plumbing and electrical goods wholesalers, and household movers; no exterior/outdoor storage shall be permitted.
  - 7. Industrial supply: interior storage of industrial materials such as plumbing and electrical supplies.

8. Light manufacturing and assembly: products produced or assembled manually or by a light industrial process by virtue of the use of light machinery; being conducted entirely within enclosed substantially constructed buildings; in which the open area around the building is not used for storage of raw materials or manufactured products, or for any other industrial purpose other than loading and unloading operations; and which are not noxious or offensive by reason of emission of smoke, dust, fumes, odors, noise, or vibrations beyond the confines of the building.
9. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site and provided on premises sales are limited in floor area to no more than (10) percent of the total gross floor area occupied by the permitted or special use;
10. Other land uses may be considered for approval by the Community Development Committee if a determination is made that the project fits the development objectives of the City.

3. ***Nuisance Factors and Hazards***

- A. In order to protect the interests of all Tenants, no operation shall be conducted which emits offensive or objectionable noise, vibration, smoke, odors, dust, or gases. Precautions should be taken in all research and other approved operations for radiation, radioactivity, fire and explosion hazards.
- B. No fuel or chemical in-ground or outdoor storage shall be allowed in the Park.

4. ***Building Standards***

- A. Any building erected shall be at least 7,500 square feet in area and have a gross floor area equal to at least 10 percent of the land area.
- B. Buildings shall be designed by an Architect or Engineer. No side, elevation or facade of a building or structure shall be unexposed to public view; consequently, all sides, elevations, or facades of all buildings and structures shall be visually pleasing and architecturally and aesthetically comparable with the surrounding environment.
- C. The Northeast Business Park encourages a variety of architectural styles. However, it is intended that a basic harmony of architecture prevail among the buildings so that no one structure detract from the attractiveness of the overall development.

- D. The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
1. Brick;
  2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate) for no more than 50% of the exterior of the building;
  3. Decorative concrete block (for no more than 50% of the exterior building wall area unless several different types and textures are used (split face, fluted, scored or striated ) to provide variety and relief;
  4. Cut stone;
  5. Exterior insulation and finish systems such as Drivit or Sunlar;
  6. Metal panels (permitted only for building expansion walls and with prior approval from the Community Development Committee);
  7. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Site Plan Review Committee on a case-by-case basis.
- E. Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness, and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other buildings and structures in the Park.
- F. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- G. No loading dock shall face the street unless the site configuration is such that it is unavoidable. In that event, the Community Development Committee shall review and approve the location of the loading dock. The Community Development Committee may assign this review of plans to the Economic Development Department. Sufficient visual screening shall be installed to screen truck loading and receiving areas from view from the street.
- H. Ancillary structures will be approved by the Community Development Committee. Approval may be granted only if such structures are necessary to the principal use of the building site, are in architectural and aesthetic conformance

- I. with other buildings or structures on the site, are properly screened, meet all requirements of these covenants and are otherwise satisfactory to the Community Development Committee at its sole discretion.

5. ***Landscaping:***

- A. ***Landscape Plan:*** The landscaping upon any building site or lot shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved in writing by the City's Site Plan Review Committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall show all ground cover and mulch areas, landscape and construction materials, and construction details.
- B. ***Landscaping Methods:*** Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkler systems, fountains, storm run-off retention ponds, reflective ponds, and landscape lighting.
- C. ***Plant Material:*** Selected plant material should provide for a variety of shade trees, evergreen trees, and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
  1. Disease and insect resistance;
  2. Hardiness to the area;
  3. The ability to provide seasonal interest;
  4. Future maintenance considerations;
  5. Ability of plant material to accomplish its intended purpose in each placement.
- D. ***Time for Completion:*** All landscaping shall be completed within ninety (90) days following occupancy, or as soon thereafter as weather will allow if such period occurs within winter months.
- E. ***Maintenance:*** The owner shall be responsible for maintaining all landscaping as approved on the original plan for his site. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Department of Planning. Landscaped areas, materials, fixtures, and improvements shall be maintained by the owner of the building site, or by such owner's long-term

lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, replacement of dead plantings, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the building site landscaping in a healthy state of growth and visually attractive in appearance.

If the owner or the owner's assigns fail to maintain the landscaping and site per the approved landscaping plan in this section, the City of Appleton or its Agent may seek an inspection warrant to enter the site and conduct such maintenance and to seek full reimbursement.

6. ***Parking, Loading***

Off-street parking and loading areas shall be provided on each building site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all site occupants and visitors and comply with the City's Zoning Ordinance regarding parking standards. All truck maneuvering must be confined within the boundaries of the property. All parking and loading areas shall be paved. Parking shall be permitted within the minimum front yard setback area, however, it shall be located no closer than fifteen (15) feet to the public right-of-way line.

7. ***Vehicle Access***

The lots adjacent to and abutting Evergreen Drive shall not be allowed vehicle ingress or egress to Evergreen Drive.

8. ***Outdoor Storage:***

No outside storage of any kind shall be permitted.

9. ***Roof Mounted Equipment:***

Roof mounted equipment shall be so located and/or screened, and painted to minimize visibility from the street and adjacent owners.

10. ***Signs:***

Identification signs shall be permitted to promote only the name and/or trademark of the owner or tenant of the parcel on which the sign is placed. Signs, lighting, etc., are to be indicated on the final site plan submitted to the Site Plan Review Committee for review. Ground signs must be set back 10 feet from the right-of-way line and must be of a low profile design subject to approval by the Committee. Pole signs are prohibited. Building signs must comply with the City Sign Code.



11. ***Maintenance Responsibilities:***

- A. Each owner shall keep its property, all contiguous street right-of-way to the edge of the pavement, and all drainage and easement areas in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:
1. The removal of all litter, trash, refuse, and wastes;
  2. Compliance with the City's noxious weed control ordinance, including the mowing of all grass areas;
  3. The maintenance of exterior lighting, signs, and mechanical facilities;
  4. The keeping of all exterior building surfaces in a cleaned, well-maintained condition;
  5. The maintenance of all drainage ways including the removal of all debris, weeds, and silt.
- B. The owner of any undeveloped lands shall maintain said lands free of rubbish, noxious weeds, and mosquito breeding pond conditions.

12. ***Site Plan Review:***

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, elevations of all sides of the building, samples of materials proposed for all external surfaces including colors and textures, and an artist's rendering of the project or a scale model to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. Renderings should show adjacent buildings, landscaping, screening, signs etc.

13. ***Repurchase Rights:***

**Failure to Build:** In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, the City has the option to repurchase said property. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, pro-ration of the current years property taxes to date of closing, title insurance policy premium, real estate commission paid at time of original closing, and any liens and encumbrances on the

property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

**Resale of Vacant Land:** In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner. The purchase price shall be computed as in the paragraph above (Failure to Build). Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

14. ***Subdivision of Lots:***

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the prior written consent of the Community Development Committee. The Community Development Committee may delegate this approval authority to the Economic Development Department. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

15. ***Waiver of Notice:***

All land sold before major assessable improvements are completed in the business park site shall be subject to the purchaser's waiving notice of assessments and hearings, and such waiver shall be part of the negotiations.

16. ***Variances:***

Notwithstanding anything contained herein to the contrary, the City of Appleton expressly reserves the right at any time to authorize in writing variances from the strict applications of these covenants and restrictions, or any one or more of them, where the circumstances, in its sole and exclusive judgement, justifies the granting of same.

17. ***Enforcement:***

The Community Development Committee has the responsibility to ensure compliance with the covenants and restrictions through any and all lawful means. In the event that the owner fails to perform in accordance with these covenants and restrictions, the Common Council, upon recommendation of the Community Development Committee, may take

whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special charge. The Common Council shall give at least thirty (30) days notice to the vendee of any violation and the steps required to correct it prior to taking any action to cure such violation.

18. ***Invalidation:***

The invalidation of any one of the covenants or restrictions herein set forth or the failure to enforce any of said covenants and restrictions at the time of its violation shall in no way affect any of the other covenants or restrictions nor be deemed a waiver of the right to enforce the same thereafter.

19. ***Term:***

Each lot shall be conveyed subject to the covenants and restrictions set forth herein, all of which are to run with the land and shall be binding on all parties and all persons claiming them for a period of thirty (30) years from the date of this Declaration of Covenants and Restrictions is recorded, after which time said covenants and restrictions as are then in force and effect shall be automatically renewed for successive periods of ten (10) years each, unless an instrument terminating such covenants and restrictions is recorded with the Outagamie County Register of Deeds by the Common Council as evidenced by a resolution duly adopted by a majority of all members of the Common Council.




**CITY OF APPLETON, WISCONSIN**  
 a Wisconsin Municipal Corporation

Agreement: \_\_\_\_\_ Declaration of Covenants and Restrictions \_\_\_\_\_

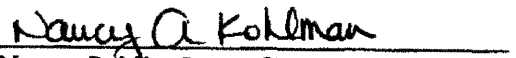
Date: November 8, 2001

By:   
 Timothy M. Hanna, Mayor

Attest:   
 Cynthia I. Hesse, City Clerk

STATE OF WISCONSIN         )  
   ) ss.  
 COUNTY OF OUTAGAMIE         )

Personally came before me this 8<sup>th</sup> day of November 2001, Timothy M. Hanna, Mayor and Cynthia I. Hesse, City Clerk of the City of Appleton respectively, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

  
 Notary Public, State of Wisconsin  
 My Commission is/expires 7-25-04

*Approved as to form:*

  
 James P. Walsh, City Attorney

Drafted by: James VanDyke  
 City of Appleton  
 Economic Development Department  
 100 North Appleton Street  
 Appleton, WI 54911-4799  
 Phone: 920/832-6468