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Document Number

**DECLARATION OF COVENANTS
AND RESTRICTIONS**

Document Title

**OUTAGAME COUNTY
RECEIVED FOR RECORD**

JAN 22 1987

**AT 2 O'CLOCK PM
GRACE HERB
REGISTER OF DEEDS**

Recording Area

Name and Return Address
David M. Sanders, Esq.
Reinhart, Boerner, et al.
P.O. Box 92900
Milwaukee, WI 53202-0900

Parcel Identification Number (PIN)

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DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is dated as of July 19, 1996 by the City of Appleton, a municipal corporation.

RECITALS

A. The City of Appleton (the "City") conveyed the real estate described on Exhibit A attached hereto (the "Guardian Parcel") to the Guardian Life Insurance Company of America ("Guardian").

B. In connection with the conveyance of the Guardian Parcel, the City granted Guardian an option to purchase two additional parcels of real estate described on Exhibit B (the "Option Parcel") and Exhibit C (the "Restricted Parcel") attached hereto.

C. Guardian has agreed to terminate its option to purchase the Restricted Parcel and in consideration of such termination, the City has agreed to subject the Restricted Parcel to the covenants and restrictions set forth below.

NOW, THEREFORE, the City, pursuant to Resolution of the Common Counsel of the City of Appleton, duly adopted on February 7, 1996, hereby declares that the real property described on Exhibit C attached hereto and defined above as the "Restricted Parcel" is and shall be held, used, transferred, sold and conveyed subject to the following conditions, restrictions and covenants (the "Restrictions"):

1. Restrictions on Use. The Restricted Parcel shall be developed and used solely for commercial office and/or warehouse distribution purposes and for no other purposes.

2. Restrictions on Construction. Any and all improvements constructed on the Restricted Parcel shall be constructed in accordance with City zoning ordinances which permit commercial office and/or warehouse distribution uses, without any variance from the building standards contained in such zoning ordinances.

3. Successors and Assigns; Runs with the Land. The Restrictions shall inure to the benefit of the owner of the Guardian Parcel and the Option Parcel and the holder of an option to purchase any portion of the Option Parcel (collectively the "Benefited Owners") and shall be binding upon the City and its successors in title

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to the Restricted Parcel, it being the intent of the City that the Restrictions shall be "covenants running with the land."

4. Amendment. This Declaration and the Restrictions shall not be modified or amended except in a writing signed by all of the Benefited Owners and the City.

5. No Waiver. No waiver or acquiescence in or consent to any breach of the Restrictions shall be construed as, or constitute a waiver of, acquiescence in or consent to any further or succeeding breach of the Restrictions.

6. Cost of Enforcement. If any Benefited Owner prevails in any action to enforce the Restrictions, such Benefited Owner shall be entitled to recover, as part of its costs, reasonable attorney's fees.

7. Severability. If any of the terms of this Declaration shall, to any extent, be invalid or unenforceable under applicable law, the remaining terms shall not be affected and shall be enforceable to the fullest extent permitted by applicable law.

THE CITY OF APPLETON, a municipal corporation

BY

Richard D. Brown
Its MAYOR

Attest

Cindi Kasse
Its CITY CLERK

J 19086 | 37.

State of Wisconsin)
Outagamie : SS
Milwaukee County)

This instrument was acknowledged before me on July 25, 1996
by Richard DeBrox and Cindi Heese, as
Mayor and City Clerk
respectively of the City of Appleton.



Mary Wendell
(
Notary Public, State of Wisconsin
My commission MARY WENDELL
Notary Public, State of Wisconsin
My commission Expires Sept. 7, 1997

This instrument was drafted by, and after recording should be returned

to:

David M. Sanders, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
P.O. Box 92900
Milwaukee, WI 53202-0900

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Exhibit A

Legal Description of the Guardian Parcel

Part of Lot 1, Block 1, of the Northeast Industrial Park Plat No. 1 and Part of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, and the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 18, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin, more fully described as follows:

Commencing at the West $\frac{1}{4}$ corner of said Section 18; thence South 88 degrees 20 minutes 30 seconds East, along the east-west $\frac{1}{4}$ line, 40.02 feet to the point of beginning; thence North 06°48'34" East, along the easterly line of Ballard Road (C.T.H. "E"), 303.40 feet; thence South 88 degrees 53 minutes 59 seconds East, along said easterly line, 10.00 feet; thence North 02 degrees 50 minutes 18 seconds East, along said easterly line, 534.03 feet; thence North 38 degrees 49 minutes 31 seconds East, along the easterly line of said Ballard Road and the southerly line of U.S.H. "41", a distance of 114.63 feet; thence North 70 degrees 31 minutes 35 seconds East, along the southerly line of said U.S.H. "41", a distance of 438.44 feet; thence North 79 degrees 34 minutes 57 seconds East, along said southerly line, 203.59 feet; thence North 88 degrees 55 minutes 59 seconds East, along said southerly line, 870.74 feet; thence South 01 degree 07 minutes 42 seconds East, 1393.62 feet to a point on the northerly line of Capitol Drive and the southerly line of Lot 1, Block 1 of the Northeast Industrial Park Plat No. 1; thence North 55 degrees 08 minutes 30 seconds West, along the northerly line of Capitol Drive, 83.27 feet; thence along the arc of a curve to the left, in said northerly line, 627.54 feet, which has a radius of 1083.00 feet, a central angle of 33 degrees 12 minutes 00 seconds, a chord of 618.80 feet that bears North 71 degrees 44 minutes 30 seconds West to a point of tangency on the east-west $\frac{1}{4}$ line; thence North 88 degrees 20 minutes 30 seconds West, along said east-west $\frac{1}{4}$ line, 1000.29 feet to the point of beginning.

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EXHIBIT B

Legal Description of the Option Parcel

Lots 3 and 4 according to CERTIFIED SURVEY MAP NO. 514 filed in Volume 3 of Certified Survey Maps on Page 514 as Document No. 952763; being a part of Blocks 1, 2, 3 and 4 and vacated street in the Northeast

Industrial Park Plat No. 1 and part of the North West 1/4 of the South West 1/4 and also lands in part of the South 1/2 of the North West 1/4 of Section 18, T21N, R18E, City of Appleton, Outagamie County, Wisconsin, excepting therefrom that portion of said Lot 1 heretofore conveyed to the State of Wisconsin, Department of Transportation by Deed recorded in Jacket 16927 Images 1-2.

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EXHIBIT C

Legal Description of the Restricted Parcel

Part of the North West 1/4 and the North East 1/4 of the SOUTH EAST 1/4 of Section 18, T21N, R18E, City of Appleton, Outagamie County, Wisconsin, more fully described as follows: Commencing at the East 1/4 corner of said Section; thence North 89 degrees 56 minutes 44 seconds west, along the East-West 1/4 line, 908.90 feet; thence South 01 degree 54 minutes 31 seconds east, along the West line of the Tri-County Expressway, 903.75 feet; thence north 89 degrees 59 minutes 50 seconds west, 324.05 feet to the point of beginning; thence continuing north 89 degrees 59 minutes 50 seconds west, 1444.17 feet to the East line of the Northeast Industrial Park Plat; thence north 00 degrees 00 minutes 10 seconds east, 904.81 feet to the Northeast corner of said plat and the center of Section 18; thence south 89 degrees 56 minutes 44 seconds east, along the East-West 1/4 line, 1138.49 feet; thence south 29 degrees 57 minutes 19 seconds east, 369.55 feet; thence south 11 degrees 43 minutes 28 seconds east, 596.06 feet to the point of beginning.

1283748

Document Number

DECLARATION OF DEED RESTRICTIONS

APPLICABLE TO ALL PROPERTIES SOLD IN THE NORTHEAST INDUSTRIAL PARK PLAT #4

As recorded on July 16, 1998 in the office of the Register of Deeds, Outagamie County, WI, as Document #1280941, Cabinet H. Page II.

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:

I. Setbacks:

A. *From Yard:* No building shall be constructed on the site nearer than forty (40) feet of the right-of-way of any public street or highway. 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.

II. Land Use:

A. Permitted Uses

1. Manufacturing except for Block 14;
2. Research, development and testing laboratories except for Block 14;
3. Wholesaling, warehousing and distribution;
4. Office operations only if they are an integral part of and a necessary adjunct to a permitted use;
5. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site except for Block 14;
6. 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.

III. Building Standards

A. Any building erected shall be at least 5,000 square feet in area and occupy 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 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;

**OUTAGAMIE COUNTY
RECEIVED FOR RECORD**

AUG - 5 1998

**AT 10 O'CLOCK A.M. P.M.
GRACE HERB
REGISTER OF DEEDS**

Record and return to:
City of Appleton
City Attorney's Office
100 N. Appleton Street
Appleton, WI 54911-4799

ENVELOPE

6/18/00

Parcel Identification Number (PIN)

2. Architectural precast concrete panels (surface finish to be painted, stained or exposed aggregate);
 3. Decorative concrete block (for no more than 50% of the exterior building wall area);
 4. Cut stone;
 5. Exterior insulation and finish systems such as Drivit or Sunlar;
 6. Wood;
 7. Metal panels (permitted only for building expansion walls);
 8. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Community Development Committee on a case-by-case basis. The Community Development Committee may assign this review of plans to the Economic Development Department.
- D. 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.
- E. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- F. 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.
- G. 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 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.

IV. *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 and adjacent unpaved street rights-of-way. 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 has the right to enter the site and conduct such maintenance and to seek full reimbursement.

V. *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 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. An 80 percent screen with a minimum height of 2½' shall be provided for all parking areas adjacent to the street right-of-way.

VI. *Outdoor Storage:*

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. All storage areas shall be paved.

VII. *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 Community Development 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. Building signs must comply with the City Sign Code.

VIII. *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.

IX. Site Plan Review:

Prior to the construction or alteration 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 plans for such building or improvements shall be submitted to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. The plans shall be reviewed within thirty days (30) days after they have been submitted and approval or disapproval given in writing.

X. Approval of Plans:

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, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.

XI. 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, ownership shall revert to the City. 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, proration of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, 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 Article XII above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

XII. 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 written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

XIII. 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.

XIV. 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.

XV *Right to Enter*

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

XVI. *Enforcement:*

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 assessment or 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.

XVII. *Invalidation:*

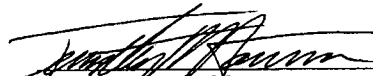
The invalidation of any one of the covenants or restrictions herein set forth or the failure to enforce any of said covenants and restrictions at the time of its violation shall in no way affect any of the other covenants or restrictions nor be deemed a waiver of the right to enforce the same thereafter.


XVIII. *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.

IN WITNESS WHEREOF, the said City of Appleton has caused these presents to be signed at Appleton, Wisconsin, this 3rd day of August, 1998.

CITY OF APPLETON:

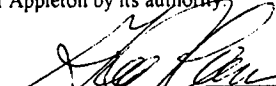


Timothy M. Hanna, Mayor


Cindi Hesse, City Clerk

STATE OF WISCONSIN)
)ss
OUTAGAMIE COUNTY)

Personally came before me this 3rd day of August, 1998, the above named Timothy M. Hanna, Mayor, and Cindi Hesse, City Clerk, of the City of Appleton, to me known to be the persons who executed the foregoing instrument as such officials of the City of Appleton by its authority.



Greg J. Carman, Notary Public
State of Wisconsin

My commission is permanent.

This instrument was drafted by Greg J. Carman, City Attorney.

AMENDED
DECLARATION OF
DEED RESTRICTIONS .

1373472

Document Number State of Wisconsin
APPLICABLE TO ALL PROPERTIES SOLD IN THE
NORTHEAST INDUSTRIAL PARK PLAT #4

As recorded on August 5, 1998 in the office of the Register of
Deeds, Outagamie County, WI, as Document #1283748.

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 or highway. 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. **Permitted Uses**

- 1. Manufacturing except for Block 14;
- 2. Research, development and testing laboratories except for Block 14;
- 3. Wholesaling, warehousing and distribution;
- 4. Office operations only if they are an integral part of and a necessary adjunct to a permitted use;
- 5. Retail sales of products manufactured on site and clearly an accessory use to the primary use of the site except for Block 14;
- 6. 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. **Building Standards**

- A. Any building erected shall be at least 5,000 square feet in area and occupy 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 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);
 - 3. Decorative concrete block (for no more than 50% of the exterior building wall area);

OUTAGAMIE COUNTY
RECEIVED FOR RECORD

JUL 18 2000

AT 11 O'CLOCK A.M. P.M.
JANICE FLENZ
REGISTER OF DEEDS

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

CJ/1800

4. Cut stone;
 5. Exterior insulation and finish systems such as DriVIT or Sunlar;
 6. Wood;
 7. Metal panels (permitted only for building expansion walls);
 8. Other building materials being developed and to be developed by the construction industry. The use of such materials will be reviewed by the Community Development Committee on a case-by-case basis. The Community Development Committee may assign this review of plans to the Economic Development Department.
- D. 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.
- E. Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or structure.
- F. 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.
- G. 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 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.
4. **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 and adjacent unpaved street rights-of-way. 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 has the right to enter the site and conduct such maintenance and to seek full reimbursement.

5. **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 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. An 80 percent screen with a minimum height of 2'-½" shall be provided for all parking areas adjacent to the street right-of-way.

6. **Outdoor Storage:**

No outside storage of any kind shall be permitted unless such stored materials are visually screened from all streets with a suitable fence, vegetation, berm, or combination thereof. Screening shall be attractive in appearance and in keeping with the architectural quality of the main structure. Said storage shall be limited to behind the front line of the building on the property, and within the building setback lines. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the buildings. Storage of fuel oil or other bulk fluids must be underground. All storage areas shall be paved.

7. **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 Community Development 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. Building signs must comply with the City Sign Code.

8. **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.

9. **Site Plan Review:**

Prior to the construction or alteration 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 plans for such building or improvements shall be submitted to the Site Plan Review Committee in accordance with Section 23-171 of the City Zoning Code. The plans shall be reviewed within thirty days (30) days after they have been submitted and approval or disapproval given in writing.

10. **Approval of Plans:**

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, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.

11. **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, ownership shall revert to the City. 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 or cost of warranty abstract, 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 Article 11 above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

12. **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 written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

13. **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.

14. **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.

15. **Right to Enter**

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

16. **Enforcement:**

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 assessment or 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.

17. **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.

18. *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.

IN WITNESS WHEREOF, the said City of Appleton has caused these presents to be signed at Appleton, Wisconsin, this 10th day of July, 2000.


CITY OF APPLETON


Timothy M. Hanna, Mayor


Cynthia I. Hesse, City Clerk

STATE OF WISCONSIN)
)ss
OUTAGAMIE COUNTY)

Personally came before me this 10th day of July, 2000, the above named Timothy M. Hanna, Mayor, and Cynthia I. Hesse, City Clerk, of the City of Appleton, to me known to be the persons who executed the foregoing instrument as such officials of the City of Appleton by its authority.


James P. Walsh, Notary Public
State of Wisconsin

My commission is permanent.

This instrument was drafted by James P. Walsh, City Attorney.

1382870

Document Number

**RELEASE OF EASEMENT
PARTIAL - JOINT**

WHEREAS, on the 30th of June, 1998, The City of Appleton, a Wisconsin Municipal corporation, granted to **WISCONSIN ELECTRIC POWER COMPANY** and **WISCONSIN BELL, INC., d/b/a AMERITECH-WISCONSIN**, hereinafter referred to as "grantee," its successors and assigns, certain easement rights, which easement rights are set forth in that certain document recorded in the Office of the Register of Deeds in and for Outagamie County, Wisconsin, on the 16th day of July, 1998, in Cabinet H on Page 11, as Document No. 1280941, and

WHEREAS, grantee has been requested and is willing to release the following rights from the force and effect of the aforesaid easement, to-wit:

the Southerly 15 feet of Lot 1, the Northerly 15 feet of Lot 10 and the Southerly 15 feet of the Easterly 105 feet of Lot 2, all located in Block 14, **Northeast Industrial Park Plat No. 4**, being part of the Northwest 1/4, Northeast 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 18, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin.

NOW, THEREFORE, for and in consideration of the sum of \$1.00, the receipt whereof is hereby acknowledged, said grantee does hereby release, discharge and abandon only those specific easement rights heretofore mentioned in the immediately preceding paragraph. It is expressly understood and agreed that all other easement rights as set forth in the aforesaid document recorded in the Office of the Register of Deeds in and for Outagamie County, Wisconsin, as Document No. 1280941 shall remain in full force and effect.

IN WITNESS WHEREOF, said **WISCONSIN ELECTRIC POWER COMPANY** has caused these presents to be executed on its behalf by its duly authorized Manager of Property Management this 19th day of September, 2000, and said **WISCONSIN BELL, INC. d/b/a AMERITECH-WISCONSIN**, has caused these presents to be executed on its behalf by its duly authorized R/W Manager, this 28 day of September, 2000.

WISCONSIN ELECTRIC POWER COMPANY

By Michael James
Michael James, Manager of Property Management

WISCONSIN BELL, INC., d/b/a AMERITECH-WISCONSIN

By Elaine M Fritz
Elaine M. Fritz, R/W Manager

OUTAGAMIE COUNTY
RECEIVED FOR RECORD

OCT 13 2000

AT 10 O'CLOCK A.M. P.M.
JANICE FLENZ
REGISTER OF DEEDS

RETURN TO:
City of Appleton, Economic Development
Attn: Mr. James E. Van Dyke
100 N. Appleton Street
Appleton, WI 54911-4799

120

31-1-5359-00, 1-5360-00,
1-5368-00
(Parcel Identification Number)

STATE OF WISCONSIN)
: SS
MILWAUKEE COUNTY)

Personally came before me this 19th day of September, 2000, Michael James, Manager of Property Management, of the above named corporation, **WISCONSIN ELECTRIC POWER COMPANY**, known to me to be the person who executed the foregoing instrument and to me known to be such Manager of Property Management of said corporation, and acknowledged that he executed the foregoing instrument as such Manager of Property Management, as the deed of said corporation, by its authority.



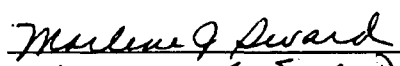
Ernest Kretschmann

Notary Public State of Wisconsin

My commission expires June 20, 2004

STATE OF WISCONSIN)
: SS
OUTAGAMIE COUNTY)

Personally came before me this 28 day of SEPTEMBER, 2000, Elaine M. Fritz, R/W Manager, of the above named corporation, **WISCONSIN BELL, INC.**, d/b/a **AMERITECH-WISCONSIN**, known to me to be the person who executed the foregoing instrument and to me known to be such R/W Manager, of said corporation, and acknowledged that he executed the foregoing instrument as such R/W Manager, as the deed of said corporation, by its authority.



MARLENE J. SWARD

Notary Public State of Wisconsin

My commission expires 6-23-02

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This instrument was drafted by Dawn Neuy on behalf of Wisconsin Electric Power Company, PO Box 2046, Milwaukee, WI 53201.