

Protective Covenants



Foundation Park

Large Rail Site
Phase 1

DECLARATION OF RESERVATIONS & RESTRICTIVE COVENANTS & CONDITIONS FOUNDATION PARK

THIS DECLARATION is made this 14th day of March, 2016, by the SIOUX FALLS DEVELOPMENT FOUNDATION, INC., a South Dakota non-profit corporation, with its principal office located in Sioux Falls, South Dakota, hereinafter called the "Foundation"; and WHEREAS, the Foundation intends to develop and offer for sale lots and tracts to be located within an addition to the City of Sioux Falls to be known as Foundation Park, (herein sometimes referred to as the "Development") and is desirous of subjecting all of the land located within this Development to certain covenants, easements, restrictions, conditions and charges as hereinafter set forth;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

The Foundation does hereby impose and charge the following real property located in Minnehaha County, South Dakota, with the following covenants, agreements, restrictions and charges as set forth in this Declaration hereby specifying that this Declaration shall constitute covenants running with the land and shall be binding upon, and for the benefit of, all owners of lots, tracts, or parcels to be platted within the following described real property, as follows:

(Legal Description)

I EASEMENTS AND RIGHTS-OF-WAY

The easements, dedicated rights-of-way for utilities, easements for storm sewer drainage purposes and functions, streets and highways shall be as shown on the plat or plats of Foundation Park to be filed by the Developer and shall be for the uses and purposes as marked and noted on such plat or plats.

The purchasers of lots, tracts, or parcels within the Development shall, at their own cost and expense, keep and maintain that portion of their property subject to the aforesaid easements and rights-of-way in the same manner as they maintain the surface of the remainder of their property in the Development and shall landscape and plant trees and shrubbery as required herein.

II PROTECTIVE COVENANTS

1. **Land Use.** The property in the Development shall be used only for those purposes as permitted by the zoning ordinances of the City of Sioux Falls and the environmental laws of the State of South Dakota as the same may be amended or changed from time to time.

2. **Type of Construction.** The front of the building may be of architectural precast concrete, concrete block, stucco finish, brick, stone, and or glass or a combination of those materials. Any other materials must be pre-approved by the Real Estate Committee. In its review of architectural plans, the Real Estate Committee intends to require structural materials and finishes used to be of high quality and compatible in design and in material components with all other structures within the property

and throughout the park. Based on the visibility from the road finished concrete, masonry, or steel panels shall be considered for side and rear walls of buildings in the development. The kind, type and use of materials to be incorporated within improvements located within the Development shall be subject to the International Building Code as contained in the Revised Ordinances of the City of Sioux Falls, South Dakota, as the same may be amended or changed from time to time, and paragraph 3, following.

3. Approval of Plans.

A. Before commencing the construction or alteration (excluding interior alterations) of any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on any tract or lot, the property owner shall first submit site plans and plans and specifications therefore to the Site Committee of the Foundation for its prior written approval, which approval the Site Committee agrees shall not be unreasonably withheld; provided, however, that the building or other structures or improvements shown thereon are harmonious in design and construction with the then existing buildings, structures and improvements in the Development.

B. Plans submitted to the Foundation must include a site plan, drainage plan, landscaping plan, all floor plans, exterior elevations, together with at least one cross-section showing the nature of the construction and materials and a description of any intended outside storage or fencing.

C. Submitted site plans and plans and specifications must contain sufficient data to indicate all materials and finishes for all foundations, exterior walls and roofs of buildings and for all outside storage, fencing and walls.

D. When reviewing the site plans, plans and specifications, the Site Committee will utilize the following guidelines:

(i) On buildings whose exterior walls are metal paneled, the panels must be of a good qual-

ity and durable finish on the metal panels will be required.

(ii) On buildings whose roofs are metal surfaced, the use of a good quality and durable finish (unpainted or painted galvanized finish being unacceptable) on the metal will be required. Any metal roof shall be a factory painted standing seam metal roof, or equivalent.

E. Signs, when approved for use, shall not extend vertically above the level of the building.

F. In the event that the Real Estate committee shall fail to approve or disapprove site plans or plans and specifications within thirty (30) days after the site plans and plans and specifications have been submitted to it, such approval shall not be required and this paragraph 3. shall be deemed to have been complied with.

G. The Real Estate Committee of the Foundation shall be comprised of members of its Board of Directors and its consulting engineers, attorneys and architects.

4. **Minimum Yard Requirements.** The following minimum yards, measured in feet, shall be required within the Development:

A. Building improvements made on lots or tracts abutting any other street or avenue within the Development shall have a minimum yard requirement of sixty (60) feet from the lot line abutting any such street or avenue, whether the same constitutes a front or side yard.

B. Minimum side and rear yard requirements shall be twenty-five (25) feet from the respective lot lines (disregarding lot lines of adjoining tracts or lots if owned by the same party) unless a greater size is required by A. or B. above.

C. The front yard and any side yard abutting on a public street shall be planted with grass, trees, shrubs and other decorative plantings and shall be otherwise appropriately landscaped, except those portions used for driveways or parking. Re-

quired tree plantings within the Development shall be as set forth in Section 15 below.

5. Sidewalks. The Owners of tracts or lots within the Development shall, at their own expense, construct and maintain sidewalks for the benefit of the public. The sidewalks shall be constructed in compliance with specifications set forth by the City of Sioux Falls. The sidewalks shall be situated within each public right-of-way immediately adjacent to the lot and shall run the full lineal length of the street side property line. Weather permitting, the sidewalk shall be completed prior to occupancy, but in no case later than three months following occupancy.

6. Parking Facilities. Owners of tracts or lots within the Development shall provide minimum parking spaces for their employees in compliance with the requirements set forth by the City of Sioux Falls. In no case shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operations be permitted in the required parking areas. All parking and driving areas shall be hard surfaced with appropriate curb.

7. Loading Areas. All loading and unloading operations shall be off-street. No loading or unloading shall be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. Loading areas shall be hard surfaced. No loading docks shall be constructed facing any public street or highway unless the loading dock and every part thereof is at least seventy-five (75) feet inside of the lot line of the street or highway on which said loading dock fronts. In addition, adequate screening will be required in front of building at the discretion of the Real Estate Committee.

8. Outside Storage. It is the desire of the Real Estate Committee of the Sioux Falls Development Foundation to have the rear and side yards as aesthetically pleasing as possible. The intent will be to work with each industry to determine the best possible plan to potentially screen any and all outside storage. The types of items used may include opaque fencing or wall, berms or landscaping. The Real Estate Committee of the Sioux

Falls Development Foundation reserves the right to have final approval of submitted plans.

9. Outdoor Signs. Outdoor signs identifying the name, business, and products of the occupant of any given site may be utilized with the prior written approval of the Foundation, which approval the Foundation agrees shall not be unreasonably withheld or delayed provided such signs are no larger than six (6) feet in height and not exceeding ten (10) feet in length. All logos meeting the aforesaid size requirement will be permitted. When submitted to the Foundation for approval, the request must include a sign permit issued by the City of Sioux Falls.

10. Maintenance of Undeveloped Areas. That portion of each lot or tract that is not improved with buildings, parking facilities, loading facilities or lawn area shall be seeded to a cover planting which grows to a height not to exceed approximately eighteen (18) inches, and at all times shall be attractively maintained. No part of any of the land area shall be planted or cultivated row crops.

11. Zoning and Building Regulations. The use and building regulations as now or hereafter imposed by the provisions of the Zoning and Building Ordinances of the City of Sioux Falls, South Dakota, shall apply throughout the Development except as the same may be modified by a duly constituted authority.

12. Fences. All fencing for screening, security or other purposes shall be attractive in appearance and shall be either all metal, industrial type of galvanized or nonferrous material or of masonry material. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the building set-back lines set forth above except with the prior written approval of the Foundation, which approval the Foundation agrees shall not be unreasonably withheld or delayed.

13. Replatting or Subdividing. The owner of any lot or tract within the Development shall never replat, subdivide or resubdivide any lot or tract into

a smaller lot or parcel without first obtaining the prior written approval of the Real Estate Committee of the Sioux Falls Development Foundation.

14. Wastes/Nuisances. Pollution: No owner, of property in the development shall create or allow to exist a nuisance, as defined by authorities with local jurisdiction now in effect or as amended, on the property within the industrial park. In addition, no rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any site and no odor(s) shall be permitted so as to render any site or portion thereof unsanitary, unsightly or offensive. In addition no use or operation shall be conducted in the industrial park which is noxious, harmful to the public health, or unsightly or detrimental to others. There shall be no operational industrial noise that constitutes a public nuisance. No garbage or decomposable animal or vegetable wastes shall be placed or stored upon any lot or tract except in tightly covered metal or plastic containers. All other refuse shall be placed in containers or enclosures in a manner not constituting a nuisance by reason of wind litter, disorderly appearance or abnormal fire hazards. The owner or the operator of a business within the Development shall be responsible for the removal of garbage and other refuse from the premises at least once each week.

15. Trees. In addition to the requirements of any existing ordinances, at least one 2" caliper deciduous tree per each forty (40) feet of frontage to be located forty (40) feet from the center line of the street on all front and side yards of every property facing a street within the Development.

As a part of the property owner's site plan submitted to the Foundation's site committee for approval, the site plan shall show the location of trees on the site as required by this Section 15. to be approved by the site committee.

16. Lighting. All outdoor lighting shall be directed in a manner such that it will not trespass onto adjoining properties or the rights-of-way of any public streets within or adjoining the Development.

17. Repurchase Option. The land subject to this Declaration is being developed for I-1 and I-2 industrial and commercial office use purposes. Purchasers of lots or tracts within the Development must commence actual construction upon the lot or tract purchased by them within three (3) years from the date the warranty deed is executed by the Foundation to a Purchaser.

If actual construction is not commenced upon a lot or tract purchased within three (3) years from the date of the execution of a warranty deed by the Foundation to the Purchaser, the Foundation shall have the option to repurchase the said lot or tract for a period of one year following the expiration of the three (3) year period following the date of the execution of the warranty deed by the Foundation to the Purchaser.

The purchase price to be paid by the Foundation to the Purchaser upon the exercise of the Repurchase Option by the Foundation for the lot to be repurchased shall be the original purchase price less any liens or encumbrances of record appearing on the Closing Date of the Repurchase Option. Real estate taxes for the year in which the Repurchase Option is exercised by the Foundation shall be pro-rated between the Foundation and the Purchaser to the Closing Date based upon the prior year's real estate taxes for the respective number of days each party was in possession of the property during the year the option is exercised by the Foundation.

To exercise the Repurchase Option granted to the Foundation hereunder, the Foundation shall give to the Purchaser written notice within the one (1) year period during which its option may be exercised advising that the Foundation intends to exercise its Repurchase Option. The closing of the repurchase of the lot or tract by the Foundation shall occur within thirty (30) days following the date of the delivery of the notice of the exercise of the option by the Foundation to the Purchaser. At the Closing, the Foundation shall pay to the Purchaser the purchase price as determined under this Section 17., reduced by the cost of an Owner's Policy

of title insurance, prorations of real estate taxes, the closing agent's fee and any other liens or encumbrances placed upon the property by the Purchaser. At Closing, the Purchaser will deliver a fully executed warranty deed to the Foundation free and clear of all liens and encumbrances except for these restrictions and easements of record.

The Repurchase Option granted to the Foundation hereunder will expire at the end of the one (1) year period following the three (3) year period in which the Purchaser must commence actual construction upon the lot or tract purchased from the Foundation.

The Foundation may, upon good cause shown, extend in writing the time in which actual construction must commence by the Purchaser.

The Foundation may enforce this Repurchase Option by an action for specific performance.

18. Exceptions and Modifications. The Board of Directors of the Foundation shall be authorized to make such exceptions to, or modifications of, these Declarations as unusual circumstances or special situations may warrant; provided, however, that such exceptions or modifications shall not invalidate these Declarations in principal or general objectives. Except for unusual circumstances or special situations, the Foundation shall enforce these Declarations in a non-discriminatory manner with regard to all owners of tracts or lots in Foundation Park.

19. Duration. These Declarations shall run with the land and be binding upon all present and future owners of any part of the land within the Development for a period of twenty-five (25) years from the date this Declaration is recorded in the Office of the Register of Deeds of Minnehaha County, South Dakota, and shall automatically renew for additional twenty-five (25) year periods un-

less within three years prior to the expiration date the then owners of at least two-thirds (2/3) of the square feet area of the land within the Development, by written declaration signed and acknowledged by them and recorded in the Register of Deeds' office, Minnehaha County, South Dakota, either cancel or modify these Restrictive Covenants and Conditions.

20. Severability. If any paragraph or part thereof of this Declaration be declared invalid, illegal or inoperative for any reason, the remaining parts, so far as possible and reasonable, shall remain fully effective and operative.

21. Enforceability. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of these Declarations, either to restrain such violation or attempted violation or to recover damages.

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