

## **Amherst Business Park Covenants**

- Page 1: Purpose, Subject Property, General Business Use and Title & Easements
- Page 2: Easements
- Page 3: Con't Easements and Land Use
- Page 4: Con't Land Use
- Page 5: Con't Land Use & Construction Requirements
- Page 6: Investment Criteria, Site Plan Review and Architectural & Design Controls
- Page 7: Lot Size Restrictions, Setback Restrictions and Landscaping
- Page 8: Con't Landscaping and Parking Provisions
- Page 9: Outdoor Storage, Facility Fencing, Building Height, Lot Drainage and Landscaping
- Page 10: Signage, Noise, General Prohibition On Subdivision of Lots, Waste Incineration and Maintenance
- Page 11: Con't Maintenance Responsibilities
- Page 12: Con't Maintenance Responsibilities, Enforcement and Pre-Purchase Rights
- Page 13: Con't Pre-Purchase Rights, Terms & Extensions, Severability and Waiver
- Page 14: Con't Waiver and Covenant Signatures

## RESTRICTIVE COVENANTS

### VILLAGE OF AMHERST BUSINESS PARK - DICALLEN STREET

For the purpose of preserving said plat and in order to protect the desirability, proper use, development and value of all land in the Village of Amherst Business Park-Dicallen Street for the benefit of the owner thereof, in consideration of our interest as owners of the lots in said plat, do hereby covenant for ourselves, our successors and assigns as follows:

#### SUBJECT PROPERTY

These conditions, protective covenants and restrictions shall apply to and restrict the use of lands comprising the Village of Amherst Business Park, which consists of the following described real property in the Village of Amherst, Portage County, Wisconsin:

Lot No. 1 of Certified Survey Map No. 7695-28-1 75 as recorded in the office of the Register of Deeds for Portage County, Wisconsin on June 8, 2001 in Volume 28 of Certified Survey Maps on page 175 as Document No. 589480; and individual parcels which may be created.

#### 1. GENERAL BUSINESS USE.

All lots shall be used only for General Business purposes, and no structure, including any manufactured, sectional or modular, shall be erected, altered, placed or permitted to remain upon any lot unless it subscribes to all restrictive covenants as set forth herein.

#### 2. TITLE AND EASEMENTS

##### A. Title

Title to specific parcels shall be transferred from the Village of Amherst to subsequent purchasers upon receipt of approval of all required site plans, landscape plans and architectural review approvals and appropriate sales transactions.

##### B. Easements

### 1) Infrastructure Easements

The Village of Amherst reserves all necessary permanent easements for all drainage ways, detention ponds and open space areas, which have been designed and constructed to serve as infrastructure for the Park. The specific easements and location of the easements will be delineated on the approved final plans and specifications for the Park and will be identical on the plat(s) and/or certified survey map(s) creating the various parcels within the Park as "open space easements" and "open space drainage easements."

### 2) Utility Easements and Utility Locations

The title to parcels shall be transferred subject to utility easements as shown on the plat(s) or certified survey map(s) of the Park as "utility easement" or "a sanitary sewer and/or water main easement." Easements may be necessary to enhance service and operations of utilities to include but limited to electric, natural gas, telecommunications, municipal sewer and water services.

Placement of Utilities: All utilities within the subject real estate shall be installed underground, except for essential components of such utilities which may terminate above ground such as the hydrants, manholes, transformers, telephone pedestals and other similar components of utility systems. All utilities shall be installed in the utility easements where provided.

### 3) Use of Utility Easements

The utility easements shall be for the benefit of the entire Park, first and foremost; however, the utility easements may be used by owners for the installation of underground utility services such as electric power, natural gas, cable television, and telecommunications service to benefit the owner's parcel subject to prior review and approval by the Village.

### 4) Use of Open Space and Open Space Drainage Easements

The open space easements and open space drainage easements are created for the benefit of all parcel owners in the Park and are reserved for providing: screening from neighboring uses; passive, open space recreation area; and common drainage handling through a series of detention ponds. Development or construction on the easements shall be strictly prohibited. These

easements are strictly private in nature. Nothing in these protective covenants and restrictions shall be construed to create any right to the general public to use these easements in any way.

### 5) Maintenance of Easements

Each parcel owner shall be responsible for routine, ordinary and customary landscape maintenance of the easements located on their property, such as, but not limited to, trimming and fertilization of ground cover, grass, shrubbery and trees and the suppression of weeds and/or nuisance growth on the easements. Damage to such easement areas caused by a third party shall be repaired by the party causing the damage. The party causing the damage shall be responsible for the costs of the repairs.

### 3. LAND USE

The use of the subject real estate shall be limited as follows:

#### A. General Business

##### Permitted Uses

- 1) Bakeries.
- 2) Banks, savings and loan associations.
- 3) Building, plumbing, electrical and general contracting offices or sales outlets.
- 4) Day care and nursery schools.
- 5) Drive-in restaurants.
- 6) Fruit and vegetable market.
- 7) Funeral Homes.
- 8) Greenhouses and nurseries.
- 9) Laundromats.
- 10) Pet Shops.
- 11) Printing shops and newspaper publishing.
- 12) Commercial recreational areas and facilities.
- 13) Professional and medical offices.
- 14) Signs as permitted by the Village Sign Ordinance.
- 15) Supermarket, grocery stores.
- 16) Wholesale and distributing establishments.

##### Conditional Uses

- 1) General retail uses including department stores.
- 2) Governmental administrative and protective facilities such as municipal halls, fire and police stations.
- 3) Hospitals and clinics.
- 4) Repair shops.
- 5) Utility structures or substations of any public

- utility including transmission or pipe lines (excluding wireless telecommunications facilities).
- 6) Animal hospital and veterinary clinics or kennels.
  - 7) Experimental, testing or research facilities.
  - 8) Hotel and motel complexes including other directly related facilities.
  - 9) Indoor skating and archery ranges.
  - 10) Indoor shooting clubs/ranges.
  - 11) Non-municipal utility substations, structures or facilities.
  - 12) Shopping centers.
  - 13) Sign companies including fabrication and repair of all types of signs.
  - 14) Any other use which the Plan Commission finds will be similar in nature, operation, and function to conditional uses allowed within the district.

## B. Manufacturing

### Permitted Uses

- 1) Bag, carpet and rug cleaning and commercial laundries.
- 2) Bakeries.
- 3) Building, plumbing, electrical and general contractor offices, storage yards.
- 4) Farm implement and trailer sales and repairs.
- 5) Feed mills.
- 6) Greenhouses and nurseries.
- 7) Ice, coal, brick and stone sale and storage.
- 8) Industrial research laboratories.
- 9) Lumber yards, providing such uses are enclosed by a min. 8' high fence.
- 10) Manufacturing and assembling of commercial and household fixtures, cabinets, and counters, including furniture.
- 11) Manufacturing of pottery or similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
- 12) Photograph processing.
- 13) Preparation, assembly and packaging of foods.
- 14) Printing and publishing.
- 15) Processing, bottling and distribution facilities for beverages.
- 16) Repair shops.
- 17) Sheet metal, welding, body, machine shops and towing service.
- 18) Sign companies including fabrication and repair of all types of signs.
- 19) Truck, terminal and storage facilities and shops including governmental motor pool uses and garages.
- 20) Warehouses.
- 21) Wholesale and distributing establishments.

### Conditional Uses

- 1) Public Parks, playgrounds and athletic fields.
- 2) Above ground and underground storage of flammable liquids; provided in addition to any other conditions, such facilities shall not be located less than 200 feet from and "R" Zoning District, and State of Wisconsin approved plans shall be submitted to the Village of Amherst prior to construction of any facility in sufficient time so as to allow the State of Wisconsin approved plans to be reviewed by the Village of Amherst.
- 3) Fertilizer blending.
- 4) Non-municipal utility substations, structures or facilities; wireless telecommunications structures, subject to the requirements listed in Section 9.0E of this ordinance.
- 5) Any other use which the Plan Commission finds will be similar in nature, operation, and function to conditional uses allowed within the district.
- 6) Circus, carnival and similar transient enterprises (storage of equipment only; excluding animals).
- 7) Transfer, storage, moving, freight and parcel delivery operations and excavating contractors.
- 8) Gas and service stations.
- 9) Railroad rights-of-way and spur tracks.

### C. Prohibited Uses

The following operations and uses are not permitted within the Amherst Industrial Park, and shall be strictly prohibited.

- 1) Mini-storage and warehouse rental operations.
- 2) Recycling Centers and Waste Transfer facilities.
- 3) Residential dwellings.
- 4) Junkyards, used auto part sales.
- 5) Entertainment facilities including theaters, taverns and magazine/video stores.

### 3. CONSTRUCTION REQUIREMENTS

A further purpose of the restrictive covenants is to insure proper use and development of each parcel in the business park; to protect the environment; to guard against the erection of improper, unsuitable structures and uses; to maintain property values; to insure protection from incompatibility and unsightliness; and to protect the health and safety of residents in the surrounding area of the business park.

The following regulations have been approved by the Village of Amherst and shall apply to the parcels now in existence or which may be created.

**A. Investment Criteria**

All construction within the Park shall meet or exceed the following minimum investment criteria (initial construction value of improvements, not including land) as a condition of site purchase and development.

General Business ..... \$ 200,000/acre  
Manufacturing ..... 200,000/first acre  
Manufacturing ..... 150,000/acre after initial investment

The Amherst Business Park has set minimum investment criteria for the first acre of development at \$200,000. The Manufacturing investment criteria falls to \$150,000. per acre after the first acre of investment. The General Business investment criteria are \$200,000. per acre for single acre lots and multiple acre lots.

**B. Site Plan Review**

Prior to the construction or alteration of any existing buildings, additions, enclosures, fences, parking facilities, signs, storage yards, or any other structures or permanent improvements on the site, the plans for such building or improvement shall be submitted to the Village for review. Village staff and Plan Commission shall review the structure and site plans to insure compatibility with these restrictions and with other buildings in the area.

**C. Architectural and Design Controls**

In the General Business zoned area, the street facade, exclusive of windows and doors shall be completely covered with masonry-like decorative material such as stucco, decorative concrete block, brick or other masonry materials. Other materials with decorative masonry may be considered. Metal siding is allowed on the non-street facade sides with a minimum of 15 feet of non-metal siding being used on the sides with no more than 80% of the side building facades being metal.

In the Manufacturing zoned area, the street facade, exclusive of windows and doors, shall be at a minimum of 35% covered with a masonry-like decorative material such as stucco, decorative concrete block (fluted, split face, or other - common or standard concrete block is not acceptable), brick or other masonry materials. Other materials in combination with decorative masonry may be considered. Metal siding is not acceptable on more than 65% of the street facade. Metal siding is acceptable for the sides and the rear facade of the facility.

D. Lot Size Restrictions

The minimum lot size for a General Business lot is one (1) acre. The minimum lot size for a Manufacturing lot is one (1) acre.

E. Setback Restrictions

Front Yard Setback

In the General Business section, the setback is 25 feet from the public street. If frontage is provided on two public streets, the lot would have two front yards, and the setback would be 25 feet on each front yard. The front yard is measured from the lot line.

In the Manufacturing section, the front yard set back is 30 feet from the public street. If frontage is provided on two public streets, the lot would have two front yards, both with the setback of 30 feet. The front yard setback is measured from the lot line.

Side Yard Setbacks

No part of a parking lot or structure in the General Business area shall be located closer than 10 feet to a side lot. If adjoining a residential area, the setback would be increased to 20 feet.

No part of a parking lot or structure in the Manufacturing area shall be located closer than 10 feet to a side lot. If adjoining a residential district, the setback would be increased to 20 feet.

Rear Yard Setbacks

The rear yard setback for General Business is 20 feet. If a building to be constructed on the lot has side walls taller than 24 feet, the setback will increase by an additional 3 feet for each 12 feet of building height. For example, the setback on a building with side walls of 25 feet would require a setback of 23 feet.

The rear yard of the Manufacturing area is to be 20 feet. If a building to be constructed on the lot has side walls taller than 30 feet, the setback will increase by an additional 5 feet for each 10 feet of building height. For example, the setback on a building with side walls of 31 feet would be 25 feet.

F. Landscaping

The front yard area of each site shall be graded, landscaped and planted with trees, shrubs, ground cover and appropriate



natural landscaping materials. Landscaping shall relate to buildings and paved surfaced as to scale, massing, size, shape and color. At the time of planting, the vegetation shall meet the specifications of the Village of Amherst Zoning Ordinance, and as may be amended from time to time.

#### G. Parking Provisions

##### Off-Street Parking Lots

Paving of parking lots are required. All parking areas shall be paved with either asphalt or concrete surfacing. Paving shall be completed within six (6) months of occupancy.

##### Parking - On Street

Street parking is prohibited to occupants of the park, including but not limited to employees, customers, suppliers, vendors and visitors.

##### Parking - Off Street

Parking setback from the front yard is 10 feet from the street right-of-way. The setback shall be landscaped. The landscape plan shall be submitted to the Village of Amherst Plan Commission for approval.

##### Off-Street Loading

(1) All loading areas shall be entirely contained on-site and within the property setback lines. No loading area shall face the front (street) side of the building. All loading areas shall be oriented to the side or the rear of the building.

(2) In the General Business area, all loading areas shall be oriented to the side or the rear of the building. No loading area shall face the front (street) side of the building.

(3) In the Manufacturing the loading areas can be oriented on any side of the building with the preference of having the loading areas to the side or rear of the building.

##### Amount of Parking

Each parcel owner shall provide a sufficient number of off-street parking spaces on the owner's parcel to accommodate the maximum number of vehicles operated by employees, customers, suppliers, vendors and visitors expected on each parcel during peak hours (including shift overlaps. In no case shall the amount of parking for each project be less than required by the Village of Amherst Zoning Code.

**H. Outdoor Storage**

**Refuse and Storage Placement**

All refuse and storage areas shall be to the side or rear of the building and not within the side and rear yard setback areas. No waste material or refuse may be dumped or permitted to remain on any part of the property outside of the building. No storage or inoperative or wrecked vehicles shall be allowed.

**Design and Construction Standards**

All outdoor storage areas shall be visually screened from all streets with a six foot high opaque fence, vegetation, berm, or combination thereof. Vegetative screens or berms, or combinations thereof, shall be at least 4 feet high at the time of installation and capable of providing a solid screen within three (3) years of installation. Screening shall be attractive in appearance and keeping with the architectural quality of the main structure. Refuse and storage areas shall be paved and maintained in an orderly and dust-free condition.

**I. Facility Fencing**

Refer to Village of Amherst Zoning Ordinance.

**J. Building Height**

The heights of all structures are subject to the Village of Amherst Zoning Ordinance.

**K. Lot Drainage**

A drainage plan for the lot shall contain water retention on site during construction and after construction. At the time of applying for a building permit with the Village Building Inspector, a site plan including improvements pertaining to drainage or flood control to handle the additional runoff generated from development of the land is required. Such plan shall include provisions for disposal of surface water without any damage to the developed or undeveloped land downstream or below the proposed development. Such drainage improvements are then required to be maintained as to retain its integrity and no such improvements may be filled or otherwise changed to impede the flow of water.

**L. Landscaping**

The front yard area of the site shall be graded, landscaped and planted with trees, shrubs, ground cover and appropriate natural landscaping materials. Landscaping shall relate to buildings and paved surfaced as to scale, massing, size, shape and

color. At the time of planting, the vegetation shall meet the specifications of the Village of Amherst Zoning Ordinance.

#### **M. Signage**

(1) No signs, other than product or company identification signs and directional signs, shall be permitted on parcels or buildings within the Park. Mounted billboards or signs are prohibited. Wall-mounted billboards are prohibited. Building-mounted signs may be attached only to the ground floor of a building, unless approval is granted by the Village to mount them higher on multi-story buildings.

(2) One corporate identity sign may be placed on a building facade or on a ground-mounted panel. No roof-mounted signs are permitted. All lettering on the sign shall be smaller in height than 10% of the wall height and all of the combined graphics shall be no longer than 25% of the wall length. In the case of double frontage lots with building facades on two streets (but no including corner lots), two such signs shall be permitted (one per frontage) consistent with these requirements.

(3) Sign permits and other sign requirements are identified in the Village of Amherst Ordinances.

#### **4. NOISE**

The Amherst Zoning Ordinance governs the noise allowed in the Amherst Business Park.

#### **5. GENERAL PROHIBITION ON SUBDIVISION OF LOTS**

Individual parcels or lots within the Park may be combined, but after being deeded to an owner by the Village, further division of parcels or loss within the Park is prohibited, except as provided below.

#### **6. WASTE INCINERATION**

No waste materials shall be incinerated in the Park except in an incinerator specifically designed and constructed for such purpose and approved or permitted by every governmental unit with jurisdiction. Any such incinerator shall be contained within the principal building on the owner's parcel.

#### **7. MAINTENANCE RESPONSIBILITIES**

#### **A. General Maintenance**

Each parcel owner shall keep said owner's property

and all contiguous street right-of-way areas to the edge of the pavement 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:

- (a) The removal of all litter, trash, refuse and waste.
- (b) The maintenance of exterior lighting, signs and mechanical facilities. All such facilities shall be in working order.
- (c) The keeping of all exterior building surfaces in a clean, well maintained condition.
- (d) The removal of unlicensed, inoperable or abandoned vehicles.

**B. Maintenance During Construction**

During construction, it shall be the responsibility of the parcel owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction material, trailers, and the like are kept in a neat and orderly manner. Burning of excess or scrap construction materials is prohibited. Construction site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution of water, soil and air during construction. Refer to the Village of Amherst Zoning Ordinance for specific regulations.

**C. Removal of Construction Debris**

All excess earth, stumps, slashings and construction debris must be removed from a lot within six (6) months from the beginning of construction of a permitted structure on said lot. Under no circumstances shall any such debris be placed or dumped on any other lot in the Property.

**D. Maintenance of Unimproved Parcels**

The owner of any undeveloped parcel must maintain said lands free of rubbish, noxious weeds, and mosquito breeding conditions.

**E. Standard for Nuisance and Maintenance Regulations**

- (1) **Nuisances:** No portion of the property shall be used in such a manner as to create a nuisance to adjacent sites or adjoining residential areas such

as, but not limited to, noise, vibrations, electro-mechanical and electro-magnetic disturbances and radiation, air and water contaminants and radiation, dust, smoke, odor, toxic or obnoxious emissions, radio-active liquids or solid waste, glare and heat and fire hazards.

- (2) Maintenance Regulations: All property shall be planted, paved, or otherwise improved and kept in a well-groomed fashion. All grass shall be mowed regularly.

#### 8. ENFORCEMENT

Abatement and Suit: Violation and breach of any restrictions herein contained shall give to any and every owner of property, and the Village of Amherst, the right to prosecute a proceeding at law or in equity against person or persons who have violated or attempted to violate any of these restrictions to enjoin or prevent them from doing so, and to cause said violation to be removed or remedied and to recover damages for said violation, including the attorney's fees of the prevailing party or parties, and such amount as may be fixed by the Court in such proceedings.

#### 9. RE-PURCHASE RIGHTS

(A) Failure to Build: The owner agrees to substantially complete the approved project within twelve (12) months from the date of purchase. In the event the owner of land purchased from the Village of Amherst does not commence construction of the approved project within twelve (12) months after the date of purchase, the Village shall have the right to re-purchase the land from the Owner. In the event the Village desires to re-purchase the land, it shall serve the owner with a notice of such intent, and thereafter the Owner shall have thirty (30) days to prepare necessary closing documents. The price paid to re-purchase the land shall be 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 the purchase, minus the sum of any unpaid property taxes, proration of the current year's 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. Conveyance shall be by Warranty Deed.

(B) Resale of vacant land: In the event the owner of land purchased from the Village of Amherst elects to sell any portion thereof which is vacant, the property shall first be offered in writing to the Village of Amherst. The Village shall have sixty (60) days from the date of receipt of such offer to accept or reject, unless an extension of time may be mutually agreed upon and set forth in writing. The purchase price shall be computed as indicated above. Conveyance shall be by Warranty Deed.

#### 10. TERMS AND EXTENSIONS

All of the foregoing covenants, restrictions, conditions and reservations shall continue and remain in full force and effect at all times as against the owner of any lot in the Property, regardless of how he acquired title, until a period of twenty-five (25) years subsequent to the date of recording of these restrictions with the Portage County Register of Deeds has occurred, on which date these covenants, restrictions, conditions and reservations shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to the end of the original term or any renewal term, a written instrument in recordable form has been signed by the owners of a majority of the lots in the property and recorded with the Portage County Register of Deeds, or its successor, which instrument provides for a change, amendment or cancellation of these restrictions and covenants, in whole or in part. Notwithstanding the foregoing to the contrary, these covenants, restrictions, conditions and reservations may be amended by affirmative written action of fifty-one percent (51%) or more of the then lot owners.

#### 11. SEVERABILITY

If any one or more of the foregoing covenants, restrictions, conditions or reservations is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the covenants, restrictions, conditions and reservations not declared to be void or unenforceable, but all of the remaining covenants, restrictions, conditions and reservations not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

#### 12. WAIVER

No delay or omission on the part of the Owner, or any owner or owners of other lots in the Property in exercising any rights, power, or remedy herein provided, in the event of any breach of the

restrictions, covenants, conditions or reservations herein contained, shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Owner or any owner or owners for or on account of his or her failure to bring any action on account of any breach of these covenants, restrictions, conditions or reservations, or for imposing restrictions herein which may be unenforceable by any such owner or owners.

WITNESS the hand and seal of said Grantor(s) this 12<sup>th</sup> day of March, 2003.

VILLAGE OF AMHERST

By

Michael Juris  
Michael Juris, President

Marcy Peterson  
Marcy Peterson, Clerk

STATE OF WISCONSIN )  
  )ss.  
COUNTY OF PORTAGE )

Personally came before me this 12<sup>th</sup> day of March, 2003, the above named Michael Juris and Marcy Peterson, to me known to be the persons who executed the foregoing instrument and acknowledged or authenticated the same.

Sandra K Keener  
\* SANDRA K KEENER  
Notary Public, Portage County, Wisconsin  
My commission expires: 12/04/05

Document drafted by:

Attorney David L. Forsythe  
Manawa, Wisconsin 54949