

Protective Covenants

*Sioux Empire
Development Parks*

Park V



**Sioux Falls Development Foundation
Sioux Falls, South Dakota**

**PROTECTIVE COVENANTS
SIOUX EMPIRE DEVELOPMENT
PARK V**

This Declaration is made this 15th day of April, 1998, 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 the Sioux Empire Development Park Five Addition (herein sometimes referred to as the "Development") and is desirous of subjecting all of the land located within the 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 described 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 or tracts presently platted or to be platted within Sioux Empire Development Park Five Addition to the City of Sioux Falls, Minnehaha County, South Dakota, as follows:

The Northeast Quarter (NE1/4) of Section Thirty-Four (34), Township One Hundred Two (102) North, Range Forty-Nine (49) West of the 5th P.M., Minnehaha County, South Dakota, except Lot 1A of Hutchinson Addition to the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof.

I.

EASEMENTS & RIGHTS-OF-WAY

The easements, dedicated rights-of-way for utilities, easements for storm sewer drainage purposes and functions, streets and high-ways shall be as shown on the plat or plats of Sioux Empire Development Park Five Addition filed or 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 and tracts 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.

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 exterior walls of all buildings located in the Development shall be fire resistant and shall be constructed of masonry or steel materials. The kind, type and use of materials shall be subject to the Uniform Building Code as contained in the Revised Ordinances of the City of Sioux Falls, 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 therefor 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. Submitted plans 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.

C. Submitted 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 plans and specifications, the Site Committee will utilize the following guidelines:

(i) On buildings whose walls are essentially metal paneled, the use of masonry or other architectural relief to be installed thereon on the street sides and the use of a good quality and durable finish on the metal panels will be required. All exterior building surfaces shall be painted in earth-tone colors.

(ii) On buildings whose roofs are essentially 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 Site Committee shall fail to approve or disapprove site plans or plans and specifications within thirty (30) days after the 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 Site Committee of the Foundation shall be comprised of members of the Board of Directors of the Foundation 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 East 60th Street North and Potsdam Avenue shall have a minimum yard requirement of seventy-five (75) feet from the lot line abutting said Street and Avenue, whether the same constitutes a front or side yard.

B. 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.

C. 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.

D. 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 appropriate landscaped, except those portions used for driveways or parking.

5. Parking Facilities. Owners of tracts or lots within the Development shall provide the following minimum parking spaces for their employees:

A. One space for each 1,000 square feet of gross floor area used for warehousing and distribution;

B. One space for each 500 square feet of gross floor area used for manufacturing; and

C. One space for each 400 square feet of office floor area.

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 areas shall be hard surfaced with appropriate curb.

6. 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 a least seventy-five (75) feet inside of the lot line of the street or highway on which said loading dock fronts.

7. Outside Storage. Outside open storage may be permitted in the rear yard when properly screened from view from all sides by means of an opaque fence or wall, minimum six (6) feet high, but no less than the highest point of screened items, and which shall be maintained in good condition. If any tract or lot within the Development has more than two contiguous acres without any structures upon the area, either used for parking, asphalted, or storage of their materials, such an area used for parking or storage shall be screened by a wood fence, landscaped berm, or masonry wall at least six (6) feet high, but in no event less than the highest point of screened items, made of an opaque material. The language of this paragraph shall not apply to areas used exclusively for employee or customer parking.

8. 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 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.

9. 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.

10. Zoning & Building Regulations. The use and building regulations as now or hereafter imposed by the provisions of the Zoning & 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.

11. 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.

12. 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 Foundation.

13. Wastes. 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 shall be responsible for the removal of garbage and other refuse from his premises at least once each week.

14. Trees. In addition to the requirements of any existing ordinances, at least one (2" caliper) tree per forty (40) feet of frontage shall be provided for any property fronting on either North 60th Street or Potsdam Avenue.

15. Lighting. All outdoor lighting shall be directed so as not to trespass onto adjoining properties or the rights-of-way of any public streets within or adjoining the Development.

16. Repurchase Option. The land subject to this Declaration is being developed for commercial real estate purposes. Purchasers of lots or tracts within the Development must commence actual construction upon the lot or tract purchased within three (3) years from the date the warranty deed is executed by the Foundation to a Purchaser.

If actual construction has 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. 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 based upon the prior year's real estate taxes for the respective number of days each party was in possession 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, at which time the purchase price (less any expenses to the Foundation on the original sale to Purchaser) will be paid by the Foundation to the Purchaser and the Purchaser will deliver a fully executed warranty deed to the Foundation.

The Repurchase Option 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.

17. 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 Sioux Empire Development Park Five Addition.

18. 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 until May 1, 2023, at which time they shall terminate; provided, however, that at any time within three (3) years before the expiration of said period, the then owners of at least two-thirds (2/3) of the square feet area of the land within the Development may, by written declaration signed and acknowledged by them and recorded in the Register of Deeds' office, Minnehaha County, South Dakota, extend these Declarations for an additional ten (10) year period, and this right to extend may be exercised thereafter so long as the owners of at least two-thirds (2/3) of the total square feet area of the land within the Development shall desire to do so.

19. 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.

20. 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.