

**NORTH EAST NEW LONDON  
BUSINESS CENTER**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

The Declaration of Covenants, Conditions, and Restrictions (CC &R's) for the North East New London Business Center is a recorded document which establishes terms and conditions for the development and use of property within the park. The following CC&R's are a covenant running with the land and are binding upon all property owners, the Declarant, its successors and assigns. The CC&R's are intended to enhance and protect the value, desirability, and attractiveness of all lots to their mutual benefit.

The CC&R's are consistent with or more restrictive than the provisions of the Zoning Ordinance of the City of New London and it's Subdivision Ordinance with respect to permitted uses, conditional uses, and development standards. To ensure compliance, the CC&R's establish procedures for the review by the City of New London of plans for any proposed development. The CC&R's also establish procedures and responsibilities for maintenance of the development.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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EXHIBITS:

- A. Legal Description of North East New London Business Center and Common Areas and Facilities.

Recorded in Official Records of Outagamie County, State of Wisconsin.

This Declaration, made this 2<sup>nd</sup> day of May, 2000, by the City of New London, is made with reference to the following:

## RECITALS

- A. The City of New London is the owner of that certain real property in Outagamie County as described in Exhibit A attached hereto and by this reference incorporated herein, and known as North East New London Business Center.
- B. North East New London Business Center is being developed as a planned business and industrial park. It is the desire and intention of the development to subject the real property in the park to certain covenants, conditions, and restrictions for the benefit of the property, and the purchasers of sites in the development. It is intended that said covenants, conditions, and restrictions bind and benefit not only said purchasers and the development, but also their respective successors, heirs, and assigns, and that all sites in the development are held, used, leased, sold and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.
- C. Higher Quality Environments – Purpose of this declaration is to provide a high quality environment and to maintain the natural beauty of the land.
- D. It is the intention of the developer and owners to further a plan of subdivision by means of the covenants, conditions, and restrictions set forth in this Declaration. Said covenants, conditions, and restrictions are intended to be common to all of the sites described in Exhibit A in the North East New London Business Center, as well as to enhance and protect the value, desirability, and attractiveness of all sites to the mutual benefit of all the owners.

## ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, as used in this Declaration, have the meanings herein set forth:

.1 Declarant

The term “Declarant” shall mean the City of New London.

.2 Declaration

The Term “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions for the New London North East Business and Industrial Center.

.3 Name of the Development

The term “North East New London Business Center” shall be synonymous with the term “subject property” and shall mean all of the real property now or hereafter made subject to this Declaration.

.4 Improvement/Improvements

The term “Improvement” or “Improvements” shall include buildings, roads, driveways, parking areas, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, fiber optic wire, storm sewers, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other structures, construction, installations, and landscaping of every type and kind, whether above or below the land surface.

.5 Site

The term “site” shall mean a fractional part of the subject property as subdivided on subdivision or parcel maps recorded from time to time in the Office of the Register of Deeds for Outagamie County.

.6 Occupant

The term “occupant” shall mean a lessee or licensee of an Owner, or any other person or entity other than an Owner in lawful possession of a site with the permission of the Owner.

.7 Owner

“Owner” shall mean: (1) City of New London or (2) the person or persons or legal entity holding record fee title to any portion of the property. In the event that the ownership of the Improvements on any Parcel shall ever be severed from the ownership of the land, whether by lease or by deed, only the Owner of the Improvements shall be deemed an Owner hereunder and shall be entitled to act on behalf of the Owner of the land for all purposes hereunder.

.8 Record-Recorded-Recordation

The terms “recorded” or “recordation” shall mean, with respect to any document, the recordation of said document in the Outagamie County Register of Deeds Office.

.9 Sign

The term “sign” shall mean any structure, device, or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device, or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

.10 Street or Streets

The term “street” or “streets” shall mean any street, highway, road, or thoroughfare within or adjacent to the subject property and shown on any recorded subdivision or

parcel map, or record or survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, line, circle, or otherwise.

.11 Subject Property

The term “subject property” shall be synonymous with the term North East New London Business Center and each site as described in Exhibit A, and shall mean all of the real property now or hereafter made subject to this Declaration.

.12 Visible from Neighboring Property

The term “visible from neighboring property” shall mean, with respect to any given object on a site, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent site at an elevation no greater than the elevation of the base of the object being viewed.

.13 Property Line

The term “property line” shall mean the boundary of every site.

.14 Net Acreage

The term “net acreage” shall mean the total number of square feet of land of the subject property, less any square feet of land included in dedicated streets, roadways, parks, easements, right of ways, or wetland areas and buffer areas as defined herein.

.15 Dispute and Arbitration Committee

The term “Dispute and Arbitration Committee” shall mean a group of seven (7) persons, comprised of two (2) from the City of New London, and five (5) selected by the owners and occupants of the North East New London Business Center. If there are five or less owners and occupants in the North East New London Business Center, there shall be one Committee member from each existing owner or occupant.

## ARTICLE II SUBJECT PROPERTY

.1 General Declaration

Declarant hereby declares that all of that real property located in the City of New London and more particularly described in Exhibit A is, and shall be, conveyed, encumbered, leased, occupied, built upon, reserved, or otherwise used, improved, or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions, and restrictions set forth herein are declared and agreed to be in furtherance of a specific plan for the subdivision, improvement, and sale of said real property and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the subject property and every part thereof. All of said covenants, conditions, and restrictions shall run with all of the subject property for all purposes and shall be binding upon and incur to the benefit of Declarant and all Owners, Occupants, and their successors in interest as set forth in this Declaration.

## .2 Conditions of Land Sale and Resale

- .2.1 The City reserves the right to limit the amount of land sold contingent upon the value added per acre. The minimum value added through development must be \$150,000 per acre sold.
- .2.2 In the event a landowner fails to start construction or make substantial use\* of the land within two (2) years of the date of purchase, the City of New London shall have the option of re-purchasing the land at the original sale price, plus the depreciated cost of any improvements of value made to or on the land by the landowner, plus any special assessments paid by the landowner that relates to said land(s), with interest at the rate of 5% per annum from the date of payments of the purchase price, date of completion of improvements and date of payment of special assessments.

\* The term "Substantial Use" shall be meant to include the construction of a minimum of \$150,000 of building and improvement value per acre purchased.

## ARTICLE III REGULATION OF OPERATIONS AND USES

### .1 Permitted Uses

The development of the subject property is planned for business, industrial, manufacturing, and professional office uses, as well as manufacturing support and service uses. Said manufacturing uses must meet the performance standards set forth in Section 3.1B below and shall not be one of the prohibited uses listed in Section 3.2. The following uses are permitted: Compatible business clustering and permitted uses within specific clusters to be determined by Developer and Municipality. Such approved uses shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to any other sites or property whether inside or outside the Center, such as, but not limited to, vibration, sound, electromechanical disturbances, radiation, air or water pollution, dust or emission of odorous, toxic, or non-toxic matter, nor create a potential for explosion or other hazard. All lighting is to be shielded so as not to be visible from neighboring property and subject to any and all appropriate laws and regulations.

- A. In addition to all standards, norms, levels and safeguards listed hereafter, all amendments thereto and new or additional standards and regulations imposed by the Wisconsin Department of Natural Resources shall be followed.
- B. General Standards: The following general standards shall be applied to the design and operation of all Business and Industrial Center uses:
  - 1. All operations, materials, machinery, equipment, and waste are to be stored and maintained within buildings, except for telephone and electric utility

transmission lines and substations, and outdoor refuse collection containers visually screened within a durable six feet (6') or higher noncombustible enclosure with concrete floor, for the disposal of Municipal Waste, as defined by the Wisconsin Department of Natural Resources.

2. A minimum of 50% (fifty percent) of exterior building walls or facades shall be constructed of masonry materials such as stone, brick, decorative block, or glass.
  3. Outdoor or underground storage tanks or vaults shall be bermed and fully enclosed with a fencing that breaks the enclosure view.
  4. All pollution control equipment shall be located within the building limits.
  5. All assembly, manufacturing, warehouse, and distribution related drainage shall be excluded from any sanitary sewer system, unless specifically authorized by the City of New London.
  
  6. The City of New London shall approve pretreatment facilities for discharge to the sanitary sewer system.
  7. Any emissions with the potential for odors must be controlled so as to prevent odors.
  8. All assembly or manufacturing facilities handling materials with a potential for groundwater pollution must install monitoring well/wells at a suitable location/locations near their downgradient property line.
- C. All uses permitted in the M-P, Manufacturing Park District and M, Heavy Manufacturing Park District of the City of New London shall be permitted where so zoned.

## .2 Prohibited Uses

The following operations and uses shall not be permitted on any property subject to this Declaration.

- .2.1 Residential use of any type.
- .2.2 Trailer courts or recreation vehicle campgrounds
- .2.3 Junkyards or recycling facilities.
- .2.4 Drilling or mining of hydrocarbon substances, coal or other minerals.
- .2.5 Television, cellular phones, and radios towers.
- .2.6 Refining of petroleum or of its products
- .2.7 Commercial petroleum storage yards (bulk storage of butane or propane).
- .2.8 Bulk storage of coal, fuel, tar, lime, and other similar storage.
- .2.9 Commercial excavation of building or construction materials; provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to Article III.
- .2.10 Distillation of bones.



- .2.11 Dumping, disposal, incineration, or reduction of garbage, sewage offal, dead animals, or other refuses.
- .2.12 Fat rendering.
- .2.13 Stockyard or slaughter of animals meat packing or processing.
- .2.14 Smelting of iron, tin, zinc, lead, or any other ore or ores.
- .2.15 Cemeteries.
- .2.16 Jails or honor farms.
- .2.17 Labor or migrant worker camps.
- .2.18 Electroplating.
- .2.19 Tire recapping.
- .2.20 Break Bulk excepting warehouse and distribution.
- .2.21 Incineration plant.
- .2.22 Heavy welding such as structural steel fabrication.
- .2.23 Fences, except as required by the City of New London, federal, State and local regulations.
- .2.24 Railroads and rail sidings.
- .2.25 Co-generation facilities.
- .2.26 Bag Cleaning.
- .2.27 Airports.
- .2.28 Race Courses of all types.

.3 Other Operations and Uses.

Operations and uses which are allowed by the zoning ordinance and which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by the City of New London. Approval or disapproval of such operational plans and specifications shall be based upon the occupants thereof, but shall be in the sole discretion of the City of New London.

3.31 Wetland Areas & Floodplain Restrictions

The areas set forth as designated wetlands shall have no permitted uses within these wetland areas. No development or construction, other than underground utilities, shall be permitted in any area designated to be within the 100-year floodplain. See also restrictions set forth in Article XV.

3.32 Buffer Areas

The areas set forth as designated buffer areas under Section 17.05 of the City of New London Municipal Code shall have no permitted uses within these buffer areas except for the following: Utility uses, access drives, easements and rights-of-way; storm water management facilities; recreational and public uses as approved by the Wisconsin Department of Natural Resources and U.S. Corps of Engineers.

#### .4 Nuisances

No business shall be permitted to exist or operate upon any site so as to be offensive or detrimental to any adjacent site of property or to its occupants or neighboring property.

A “nuisance” shall include, but not limited to, any of the following conditions:

- .1 Any use, excluding reasonable construction activity, of the site which emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any waterway, and which in the opinion of Declarant, and/or the Dispute and Arbitration Committee, may adversely affect the health, safety, comfort of, or intended use of their property by persons within the area.
- .2 The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere which discharge in the opinion of the Declarant may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area or which may be harmful to property or vegetation.
- .3 The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwave, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the site upon which the operation is conducted.
- .4 Any vibration, noise, sound, or disturbance which, in the opinion of Declarant, is objectionable due to intermittence, beat, frequency, strength, shrillness, and shall not exceed maximum permitted decibel levels for the designative octave band as set forth in the municipal zoning ordinance.

#### .5 Condition of Property

The Owner or Occupant of any lot shall at all times keep it and any building, improvements, and appurtenances thereon in a safe, clean, and wholesome condition and comply at its own expense, in all respects, with all applicable governmental, health, fire and safety ordinances, regulations, requirements, and directives, and the Owner or Occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever which may accumulate upon such lot.

#### .6 Maintenance and Repairs

Each site and all improvements thereon, including all storm drains, shall at all times be constructed, kept, and maintained by the Owner or Occupant of the site in similar condition, repair, and appearance to that maintained by Declarant and other owners of properties of comparable construction. All repairs, alterations, replacements, or additions to improvements shall be at least equal to the original work in quality. The necessity and adequacy of such repairs shall be measured by the same standard as set forth above for the original construction and maintenance and shall be in compliance with the Design Guidelines which may be set by Declarant from time to time.

.7 Refuse Collection Areas

All outdoor refuse collection areas shall be enclosed and screened by a constructed wall of durable material. All such areas shall have concrete floors and shall be sufficient in size to contain all refuse generated on each site, but in no event smaller than six (6) feet by eight (8) feet. No refuse collection areas shall be permitted between a street and the building, or within the front set back area.

.8 Public Utilities

Declarant reserves the sole right to grant consents for the construction and operation of public utilities including, but not limited to, poles or lines for electricity, telephone or fiber optic, above-or below-ground conduits, and gas pipes in and upon any and all streets now existing or hereafter established upon which any portion of the subject property may now or hereafter front or abut. Declarant reserves the exclusive right to grant consents for any and all street improvements, including, but not limited to, street lighting, grading, seeding, tree planting, signs, shelters, sidewalks, paving, sewer and water installation, whether it be on the surface or subsurface, and no owner or occupant shall enter into any contract or agreement with any public utility with reference to the installation of any utility service or street improvement without Declarant's prior written consent.

Notwithstanding the provisions of Section 5.2, Declarant reserves the exclusive right to approve above-ground utility lines across the subject property or any portion thereof on a temporary basis for the purpose of construction, and such lines shall be permitted when required by a government agency.

.9 Utility Lines and Antennas

No sewer, drainage, or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave, or radio signals, shall be constructed, placed, or maintained anywhere in or upon any portion of the subject property other than within buildings or structures, unless the same shall be contained in conduits or cables constructed, placed, or maintained underground in designated utility corridor or concealed in or under buildings or other structures, except for telephone transmission lines and electric utility transmission lines and substations. No antenna for the transmission or reception of telephone, television, microwave, or radio signals shall be placed on any building or other improvement within the subject property without the consent of Declarant. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on the subject property.

.10 Excavation

No excavation of the subject property or any site therein shall be made except in connection with construction of any improvements, and upon completion, exposed openings shall be backfilled and distributed ground shall be graded, leveled, seeded and

restored to its original condition. Necessary permits for this work must be obtained prior to beginning the work from Declarant.

## ARTICLE IV CONSTRUCTION OF IMPROVEMENTS

### .1 Approval of Plans Required

No improvements shall be erected, placed, altered, maintained, or permitted to remain on any site by any Owner or Occupant until final plans and specifications shall have been submitted to and approved in writing by the City of New London. Such final plans and specifications shall be submitted in duplicate over the authorized signature of the Owner or Occupant, or both, of the site, or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the City of New London, but shall in any event include the following:

- .1.1 A site development plan of the site showing the nature, grading scheme, kind, shape, composition, and location of utility easements and all structures with respect to the particular site (including proposed front, rear, and side setback lines), and with respect to structures on adjoining sites, and the number and location of all parking spaces and driveways on the site;
- .1.2 A landscaping plan for the particular site;
- .1.3 A plan for the location of signs and lighting; and
- .1.4 A building elevation plan showing dimensions, materials, and exterior color scheme in no less detail than required by the Building Inspector for the issuance of a building permit. The location and purpose of all drains shall be shown. Material changes in approved plans must be similarly submitted to and approved by the City of New London.
- .1.5 A proposed use plan defining the use of any and all structures. Any assembly or manufacturing facilities shall include a listing of any materials expected to be used on the premises in the anticipated use of the premises, which if released to the ground or air will violate any existing governmental regulation.
- .1.6 Applicants shall provide evidence of insurability at the time of submission of plans to the City of New London under Section 4.1.

### .2 Basis for Approval

Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning, or other rooftop installations, and conformity of the plans and specifications to the purpose and intent of this Declaration, as well as Section 17.05 of the City of New London Municipal Code. No plans will be approved which do not provide for the underground installation of power, electrical, telephone, and other utility lines from the property line to buildings, and the complete

visual screening of all transformer and terminal equipment. Except as otherwise provided in the Declaration, the City of New London shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

- .2.1 Failure to comply with any of the restrictions set forth in this Declaration;
- .2.2 Failure to include information in such plans and specifications as may have been reasonably requested by the City of New London;
- .2.3 Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
- .2.4 Objection on the grounds of incompatibility of any proposed structure or use with existing structures or uses upon other sites, or other property in the vicinity of the subject property;
- .2.5 Objection to the location of any proposed structure with reference to other sites or other property in the vicinity;
- .2.6 Objection to the grading or landscaping plan for any site;
- .2.7 Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;
- .2.8 Objection to the number or size of parking spaces, or to the design of the parking area;
- .2.9 Any other matter which, in the judgement of the City of New London, would render the proposed improvements or use inharmonious with the general plan for improvement of the subject property, Section 17.05 of the City of New London Municipal Code, or with improvements located upon other lots or other property in the vicinity.

### .3 Results of Inaction

The City of New London will either approve or disapprove plans and specifications submitted to it for approval within forty-five (45) days from the time they are received.

### .4 Approval

The City of New London may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same, subject to specific conditions. Upon approval or conditional approval by the City of New London of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the City of New London, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same.

### .5 Proceeding with Work

Upon receipt of approval from the City of New London pursuant to Section 4.4, the Owner or Occupant, or both, to whom the same is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with obtaining State Building Approval, commencement and completion of all approved excavation,

construction, refinishing, and alterations. In all cases, work shall commence within two (2) years from the date the owner acquires title to the property and one (1) year after building plans have been approved, and if work is not so commenced, approval shall be deemed revoked, unless the City of New London, pursuant to written request made and received prior to the expiration of said one (1) year plans approval period, extends the period of time within which work must be commenced. The time limits imposed run concurrently.

#### .6 Completion of Work

Any improvement commenced pursuant hereto shall be completed within one (1) year from the date of the City's approval of the plans and specifications therefor, except for so long as such completion is rendered impossible, or unless work upon the proposed improvements would impose a great hardship upon the Owner or Occupant to whom the City's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of Owner or Occupant. The City of New London may, upon written request made and received prior to the expiration of the one (1) year period, extend the period of time an additional one (1) year within which work must be completed. Failure to comply with this Section 4.6 shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Article VIII. Final pavement of parking lot areas may be extended one year upon the request of the owner.

#### .7 Declarant

The City of New London shall not be liable for any damage, loss, or prejudice suffered or claimed by any person on account of:

- .7.1 The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
- .7.2 The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or
- .7.3 The development of any site within the development.

#### .8 Construction without Approval

If any improvement shall be erected, placed, or maintained upon any site or the exterior design thereof, or any new use commenced upon any site, other than in accordance with the approval by the City of New London pursuant to the provisions of this Article IV, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this Declaration; upon written notice from the City of New London, any such improvement so altered, erected, placed, maintained, or used upon any site in violation of this Declaration shall cease or be amended so as to conform to this Declaration. Should such removal or alteration or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article VIII and the City of New London Code of Ordinances.

## ARTICLE V DEVELOPMENT STANDARDS

### .1 Minimum Setbacks

Except as otherwise provided by municipal zoning or provided in Section 5.2, no structure of any kind, and no part thereof, shall be placed within sixty (60) feet of any property line adjacent to a street, or within thirty (30) feet of any interior property line. It is expected that maneuvering of trucks and trailers be confined to the premises of each Occupant. Loading docks will not be permitted along the front elevation of any building. In areas where the buffer zone exists, any required setback shall be deemed included as part of the buffer zone.

### .2 Exceptions to Setback Requirements

The following improvements, or parts of improvements, are specifically excluded from the setback requirements set forth in Section 5.1;

- .2.1 Steps and walkways;
- .2.2 Paving and associated curbing; (see 5.5.3)
- .2.3 Landscaping and irrigation systems;
- .2.4 Planters, or walls not exceeding forty-two (42) inches in height; and
- .2.5 Underground utility facilities and sewers.
- .2.6 Signs and lighting.

### .3 Landscaping

Within ninety (90) days following completion of construction, or by the date each improvement is occupied, whichever first occurs, each site shall be landscaped in accordance with the approved plans and specifications and in conformity with the Site Plan Review regulations contained in Section 17.05 of the New London Municipal Code. An exception will be made due to adverse weather conditions. After completion, the landscaping shall be maintained in a sightly and well-kept condition. If, in Declarant's reasonable opinion, the required landscaping is not maintained in a sightly and well-kept condition, Declarant shall be entitled to the remedies set forth in Article VIII.

### .4 Signs

No sign shall be permitted on any site unless approved by the City of New London in writing. All signs must comply with Section 17.05 of the City of New London Municipal Code.

### .5 Parking Area

Off-street parking adequate to accommodate the parking needs of the Owner or Occupant, and the employees and visitors thereof, shall be provided by the Owner or Occupant of each site. The intent of this provision is to eliminate the need for any on-street parking; provided, however, that nothing herein shall be deemed to prohibit on-street parking of public transportation vehicles. If parking requirements increase as a

result of a change in the use of a site or in the number of persons employed by the Owner or Occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

- .5.1 Required off-street parking shall be provided on the site, on a contiguous site, or within such distance from the site, as the City deems reasonable.
- .5.2 Parking areas shall be attractively landscaped, and paved so as to provide dust-free, all weather surfaces. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate landscaping and adequate driveways and space for the movement of vehicles.
- .5.3 No parking spaces shall be located on or permitted within 30 feet of any street frontage, or within 15 feet of any other property line, or within 75 feet of adjacent residential property.
- .5.4 Parking spaces must be provided for the handicapped, and must be clearly marked for this purpose.

#### .6 Storage and Loading Areas

All storage, maintenance, and loading areas must be constructed and used in accordance with plans approved by the City. All storage, maintenance, and loading areas must be kept clean and in good condition and repair. An effective landscape screen shall be constructed and maintained around all loading dock areas.

#### .7 Site Coverage

The maximum building and parking area coverage (impervious surface) on any site shall not exceed seventy-five (75) percent of the total square footage of the site.

#### .8 Building Height

The maximum height of all structures within the subject property shall be seventy-five (75) feet.

#### .9 Fire

All site layouts and structures shall comply with the most recent applicable State and City Building Codes. No structure and no activity within a site or structure shall pose a hazard of fire for adjacent lots and/or structures. Access for firefighters and equipment shall be provided for every structure on the site.

#### 5.10 Consistency

If any of the above standards conflict with the municipality's existing ordinances, both current and future, the more restrictive of the two shall apply.

#### .11 Drainage Exclusion from Sewer System

All assembly or manufacturing, warehousing, and distribution related drainage shall be excluded from the publicly owned sanitary sewer system.



## ARTICLE VI MAINTENANCE OF COMMON AREAS AND FACILITIES

### .1 Declarant's Maintenance Responsibility

Until 50 acres of the subject property is sold, Declarant shall maintain and repair all common areas and facilities located on the subject property further described in Exhibit A attached hereto, which common areas shall include all walking trails, and all special landscaped areas. Such maintenance and repair shall include, without limitation:

- .1.1 Cleaning, maintenance and relamping of any external lighting fixtures, except such fixtures which are along public roads.
- .1.2 Performance of necessary maintenance of all landscaping as required within the common areas including trimming, watering, and fertilization of all grass, groundcover, shrubs and trees; removal of dead or waste material; and replacement of any dead or diseased grass, groundcover, shrubs, or trees.
- .1.3 The removal of trash and rubbish within the common areas.
- .1.4 The cleaning, maintenance, and repair of all storm water management systems within the common areas which are not otherwise located upon a lot or on a roadway and thereby become the responsibility of an Owner or Occupant pursuant to Section 3.5.
- .1.5 Owners shall provide public liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the common areas, sidewalks/trails, and passageways, but not within any site or the improvements thereon or within any building located on a site or within any other area within the exclusive control of any Owner or Occupant; such insurance to afford protection of not less than \$1,000,000 with respect to bodily injury or death to any one person, not less than \$5,000,000 with respect to any one accident, and not less than \$3,000,000 with respect to property damage. These amounts may be subject to change as deemed necessary.

### .2 Allocation

The Declarant will be responsible for all costs associated with maintaining the common areas and facilities until 50 acres of the subject property has been sold.

### .3 Computation

All costs for maintaining the common areas and facilities will be based on the actual costs of labor and materials incurred by the City of New London Parks Department.

### .4 Assessment

Each owner of property in the North East New London Business Center will pay a pro-rated share of the total cost for maintaining the common areas and facilities. This pro-rated share will be allocated by acreage owned. The formula will be the total acreage of the Center divided by the total yearly costs for maintenance. This formula will yield a

per acre cost. Each property owner will then multiply the total acres owned by the per acre cost to arrive at the individual property owner's assessment.

.5 Collection

All maintenance costs shall be paid in full by January 31<sup>st</sup> of the year following their incurrence.

.6 Owner's Maintenance Responsibility

Each owner of a site shall be responsible for the maintenance of its site and the improvements constructed thereon.

ARTICLE VII MODIFICATIONS

7.1 Procedure

There shall be no modifications to these covenants until there shall be at least five lots are sold. This covenant can be modified and amended from time to time providing said amendments do not violate conditions of approval. Any modification or amendment must be agreed to by at least eighty percent (80%) of the owners of lots (with one vote per owner). Each Owner shall be given sixty (60) days written notice of the proposed modification or amendment at the address such Owner utilizes for payment of taxes. Lack of response within said time period shall be deemed to be approval by that Owner. Notice shall be by Certified Mail return receipt requested.

ARTICLE VIII ENFORCEMENT

8.1 Default and Remedies

In the event of any breach, violation, or failure to perform or satisfy any covenant, condition, or restriction which has not been cured within thirty (30) days after written notice to do so, Declarant or Owner at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant or Owner may be entitled by law or equity, whether or not set forth herein. All remedies provided therein or by law or equity shall be cumulative and not mutually exclusive.

- .1 Enforcement of City Codes and Ordinances. The City of New London may impose punitive action to correct Municipal Code violations.
- .2 Damages. Declarant or Owner may bring suit for damages for any compensable breach or of noncompliance with any of the covenants, conditions, or restrictions, or declaratory relief to determine the enforceability of any of these covenants, conditions, or restrictions.
- .3 Equity. It is recognized that a violation by an Owner of one or more of the foregoing covenants, conditions, or restrictions may cause Declarant or

Owner to suffer material injury or damage not compensable in money, and that Declarant or Owner shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these covenants, conditions, and restrictions or an injunction to enjoin the continuance of any such breach or violation thereof.

- .4 Abatement and Lien Rights. Any such breach or violation of these covenants, conditions, and restrictions or any provision hereof is hereby declared to be a nuisance, and Declarant shall be entitled to enter the site or portion of the subject property as to which the breach of violation exists and summarily abate and remove, without further legal process, to the maximum extent permitted by law, any structure, thing or condition that may exist in violation of any of these restrictions; or take those actions which are required of any person or entity which is subject to this Declaration; or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these restrictions – all at the sole cost and expense of Owner or any person having possession under Owner. Any costs or expenses paid or incurred by Declarant in abating such nuisance or prosecuting any such remedy (including all reasonable attorney's fees and costs of collection), together with interest thereon at the rate of 10% per annum, shall be a charge against the site or portion of the property as to which the breach or violation exists, and shall also be the personal obligation of that person who was Owner when such charges became due or who committed such breach or violation. In addition to any other rights or remedies hereunder, Declarant may deliver to Owner and record with the Office of the Register of Deeds for Outagamie County to the extent allowable under the laws of Wisconsin, certificate or notice of claim of lien (which among other things, may, but need not recite the nature of the violation, the legal description of the site or portion of the property affected by such violation, the record or reputed Owners thereof, Declarant's name and address, and the remedies being pursued by Declarant or the amount of any such lien claim has not been charged) to Declarant's satisfaction, and if any recited amounts so charged have not been paid within 30 days thereafter, Declarant or its authorized representatives may foreclose such lien by a sale conducted pursuant to the pertinent and applicable statutes, regulations, and rules of procedure allowable and applicable in the State of Wisconsin to the extent therein permitted by law. Declarant, through its authorized representatives, may bid on and acquire any property subject to such lien at any such foreclosure sale. If the violations recited in such lien claim are timely cured and any recited amounts timely paid as provided above, Declarant shall forthwith record an appropriate release of such lien at Owner's sole expense.

.2 Waiver.

No waiver by Declarant or Owner of a breach of any of these restrictions, and no delay or failure to enforce any of these restrictions, shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these covenants, conditions, and restrictions. No waiver by Declarant or Owner of any breach of default hereunder shall be implied from any omission by Declarant or Owner, to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Declarant or Owner to or of any act by an Owner shall not be deemed to waive or render unnecessary Declarant or Owner consent or approval to or of any similar acts by Owner.

.3 Cost of Enforcement.

In the event of any legal or equitable action or proceedings instituted to enforce any provision of these restrictions, the party prevailing in such action shall be entitled to recover provision of these restrictions, the party prevailing in such action shall also be entitled to recover from the losing party all of its costs, including court costs and reasonable attorney's fees.

.4 Non-Exclusive Rights of Enforcement

The rights of enforcement granted to Declarant or Owner are non-exclusive and shall be exercisable by Declarant or Owner for so long as Declarant or Owner owns any interest in the subject property. Concurrently, each Owner, and the Dispute and Arbitration Committee, their successors, and assigns, are hereby granted all of the rights of enforcement and the remedies provided to Declarant or Owner by this Article VIII. Any such Owner, or the Dispute and Arbitration Committee, may seek enforcement of all remedies in accordance with the provisions of this Article independently of Declarant.

.5 Enforcement by the Municipality

The municipality may also independently enforce those portions of the Declaration which directly relate to the conditions, duties, or obligations required or imposed. In the event the municipality elects to seek enforcement, or in the event of a breach of any duty or interference with any of the rights or benefits herein established, the municipality may give written notice of such breach or interference to the Owner together with a written demand to remedy the breach or interference by enforcing the Declaration. If the Owner fails to take appropriate action within ninety (90) days of the receipt of said written notice, upon a resolution of the municipality, the municipality shall have the full power to enforce the Declaration, including without limitation the power to assess, to lien, and to foreclose, in respect to the matters set

forth in the notice. Any funds collected by municipality shall be applied, after deducting expenses of enforcement, to correct the breach of interference, and any excess funds shall be applied to the benefit of the City of New London.

.6 Enforcement by the Dispute and Arbitration Committee

The Dispute and Arbitration Committee shall have full authority to enforce these covenants, conditions, and restrictions should an owner or occupant be out of compliance. All costs of enforcement shall be paid by Declarant, which shall have the right to recover such costs as provided in Section 8.3. The City of New London Zoning Officer/Code Enforcement Officer as the designee of the Committee, shall be authorized by the Committee to enforce issues found by the Committee to be out of compliance.

ARTICLE IX CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the subject property.

ARTICLE X WAIVER

Neither Declarant nor its successors or assigns shall be liable to any Owner or Occupant of the subject property by reason of any mistake in judgement, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner of any said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

ARTICLE XI RUNS WITH LAND

All covenants, conditions, restrictions, and agreements herein contained are made for the direct, mutual, and reciprocal benefit of each and every site of the subject property; shall create mutual, equitable servitude upon each site in favor of every other site; shall create reciprocal rights and obligations between all grantees of said sites, their heirs, successors, and assigns, and shall, as to the Owner or Occupant of each site, his heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other sites, except as provided otherwise herein.

ARTICLE XII RIGHTS OF MORTGAGEES

No breach or violation of these covenants, conditions, and restrictions shall defeat or render invalid the lien of any mortgage, deed or trust, or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of any site or portion thereof; provided that all of these restrictions shall be binding upon and effective against any subsequent Owner of the property or any portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise pursuant to such lien rights.

#### ARTICLE XIII CAPTIONS

The captions of articles and sections herein are used for convenience only and are not intended to be part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular article or section to which they refer.

#### ARTICLE XIV EFFECT OF INVALIDATION

If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

#### ARTICLE XV WETLAND AREAS RESTRICTIONS

The vegetation or hydrology of designated wetlands areas will not be altered in any way or by any means or activity including (1) cutting or mowing; (2) cultivation; (3) grazing; (4) harvesting wood products; (5) burning; (6) placing of refuse, wastes, sewage or other debris; (7) draining, dredging, channeling, filling, discing, pumping, diking, impounding and related activities, or (8) diverting or affecting the natural flow of surface or underground waters into, within and out of these areas.

The proceeding "Declaration of Covenants, Conditions, and Restrictions" were approved for recording this 2<sup>nd</sup> day of May, 2000 by the Common Council of the City of New London, Outagamie and Waupaca Counties, Wisconsin.

BY: \_\_\_\_\_  
Wayne Toltzman, Mayor

Attest: \_\_\_\_\_

James R. Villiesse, City Clerk

Revised May 3, 2000.