

CITY OF DOWAGIAC

DOWAGIAC INDUSTRIAL PARK

PROTECTIVE COVENANTS AND DECLARATION OF RESTRICTIONS

Approved: 4th day of May, 1992
Amended: 11th day of September, 1996
Amended: 8th day of January, 2001
Amended: 26th day of April, 2004

INTRODUCTION:

PURPOSE:

These covenants and restrictions provide a means for the protection, regulation, and control of lands, buildings, and other structures located on, or contained within, the Dowagiac Industrial Park and are intended to be used in conjunction with, and supplemental to the "Zoning and Planning" provisions, Title V, of the Dowagiac City Code and will comply with all regulatory agencies having jurisdiction thereof.

These covenants and restrictions are established to promote, protect, and enhance, the character and integrity of this platted industrial subdivision. They are enacted to promote the most advantageous and beneficial development and use of these lands; to provide for appropriate facility design and use of building and landscape materials, in keeping with the character and quality of the subdivision; and to encourage and maintain a stable, healthy, and vibrant local economy.

APPLICABILITY:

These covenants and restrictions shall be applicable to each lot, combination of lots, subdivision, or replatting of land within the boundaries of land described as:

Certain property situated in the City of Dowagiac, County of Cass and State of Michigan, more particularly described as follows, to-wit:

Beginning at the West quarter (1/4) corner of Section 1, Town 6 South, Range 16 West which is the point of beginning of the lands herein described; thence South 89° 50' East along the East and West quarter (1/4) line 880.80 feet; thence South 0° 17' West 214.5 feet; thence South 89° 50' East 132.0 feet; thence South 0° 17' West 1105.5 feet more or less to the South eighth line of said Section 1; thence South 89° 50' East along said South eighth line of said Section 330.0 feet more or less to the West eighth line of said section; thence South 0° 17' West along said West eighth line 1317.0 feet more or less to the South line of said Section 1; thence North 89° 40' West along said South line of said Section 1, 1349.0 feet more or less to the Southwest corner of said Section 1; thence North 0° 25' East 2632.4 feet more or less to the point of beginning. Excepting therefrom a parcel described as: Commencing at the West 1/4 corner of said Section 1, Town 6 South, Range 16 West, thence South 0° 25' West 567.45 feet; thence South 89° 50' East 170.0 feet; thence North 0° 25' East 567.45 feet to the East and West 1/4 line; thence North 89° 50' West along said East and West 1/4 line 170 feet to beginning.

Also,

That part of the West half of the Northwest quarter (1/4) of Section 12, Town 6 South, Range 16 West, lying North of the Peavine North branch drain and Northwest of the Michigan Central Railroad property.

Also,

That part of the East half of the Northwest quarter (1/4) of Section 12, Town 6 South, Range 16 West, lying West of the Michigan Central Railroad property.

Also,

That part of the Southeast Quarter of fractional Section 2, Township 6 South, Range 16 West, City of Dowagiac, Cass County, Michigan, Described as:

Beginning at a point on the East line of said Section 2 that is 320.00 feet South 00° 00' 27" East of the East Quarter Corner of said Section 2; Thence South 00° 00' 27" East on the West line of Dowagiac Industrial Park Recorded in Liber 1-K, Pages 540-544 and said East Section line 2311.82 feet to the Southeast corner of said Section 2; Thence North 88° 46' 03" West on the South line of said Section 2 a distance of 1299.44 feet to the West line of the East half of the Southeast quarter of said Section 2; Thence North 00° 06' 55" West on said West line and the East line of "Henry Heights" Subdivision

recorded in Liber 1-F page 280 and the East line of "Merrywill Shores" Condominium recorded in Liber 769, pages 737-788 a distance of 2427.64 feet; thence South 88° 37' 14" East parallel with the East and West quarter line of said Section 2 a distance of 225.70 feet; thence North 00° 06' 55" West parallel with said West line 207.64 feet to said East and West quarter line; Thence South 88° 37' 14" East on said East and West quarter line 638.78 feet; thence South 00° 00' 27" East parallel with the East line of said Section 2 a distance of 320.00 feet; thence South 88° 37' 14" East parallel with said East and West quarter line 440.00 feet to the point of beginning.

And, containing 188.62 acres of land more or less. This land is now commonly referred to as the Dowagiac Industrial Park and is located entirely within the established boundaries of the City of Dowagiac.

TERM:

These covenants and restrictions shall become effective with the recording of same in the office of the Register of Deeds, Cass County, Michigan; and shall expire at 12:00 p.m., May 1, 2031, subject to the recorded amendment(s) thereof.

AMENDMENT:

The City of Dowagiac, by resolution of its City Council, shall have the right from time to time as it deems necessary, to amend these covenants and restrictions for the purpose of deleting, modifying, altering or supplementing the provisions herein contained, provided that the City of Dowagiac shall not amend these covenants and restrictions in any manner which would prevent the continued use of an existing building, structure, or lot for the use, operation, or function previously approved by the City of Dowagiac, as evidenced by the site plan approval of its Planning Commission. The amendment resolution enacting the deletion, modification, alteration, or supplement, shall be signed by the City Clerk and Mayor respectively, of the City of Dowagiac, and recorded in the office of the Register of Deeds, Cass County, Michigan.

DECLARATION:

COVENANTS AND RESTRICTIONS:

1.) **Building Materials and Construction**

All buildings and other structures shall be constructed of durable materials, including, but not limited to; brick, block, concrete, masonry, steel, iron and aluminum; and shall require no periodic painting, staining or treatment. No wood-frame or "pole-barn"-style buildings shall be permitted. All building fronts shall be constructed with a minimum combined glass and/or masonry surface area equal to 40% of the total front surface area. Pre-engineered metal buildings, or metal building components shall be permitted: subject

to all other provisions contained herein. Previously used materials shall not be incorporated within any building without the consent of the Building Official. No structure, carport, garage, barn or other outbuilding of a temporary nature shall be situated, erected or maintained on the property or any lot. The City Planning Commission will have the right to review all site materials planned to be used to ensure that all other covenants will be adhered to.

2.) Storage

- A. Open, outdoor storage of equipment, raw materials, semi-finished or finished products, discards, and trash is prohibited; with the following exception: The temporary outdoor storage of raw materials awaiting processing or finished products awaiting shipment, shall be allowed when said storage is entirely contained on a hard-surfaced lot; and shielded by an opaque fence or wall (that is architecturally compatible to the building's finished materials), at minimum six (6) feet in height, and in no instance less than the height of the materials or products stored; and at no point encroaches on any of the yard requirements established by the Industrial Park Zoning District of the Dowagiac City Code.
- B. All solid waste materials, refuse, or discarded matter of any type, awaiting pick-up, must be fully contained within well-maintained receptacles or dumpsters, with lids; and located on a hard-surfaced area, enclosed on three sides by an opaque wall or fence constructed at a height no less than the height of the waste containment vessels used.
- C. The use of tractor-trailer, or other trucks or vehicles, for storage is prohibited.

3.) Landscaping & Maintenance

All lots and lot areas, not occupied by permitted parking or storage-lot or building improvements, shall, at minimum, be seeded or sodded and maintained as lawn. In addition, building owners or developers are encouraged to incorporate the significant use of trees, shrubs, bushes and other suitable plant materials in their landscape plans. At minimum, each developed lot shall contain (1) one deciduous or coniferous tree per nine hundred (900) square feet of building construction. Said trees being a minimum 1-1/2" caliper or 6' in height at time of planting. Bushes or shrubs, may be substituted for the tree requirement at a two-for-one (2:1) ratio. All owners, lessees, or tenants of any parcel in the Industrial Park must maintain landscaped areas and plant materials in a living, properly-manicured condition so as to present a pleasant, well kept appearance.

Areas that are sold or set aside for future expansion must also be maintained as lawn area within 25 feet of streets, roadways and curbs.

Areas that are disturbed (such as through excavation, grading, etc.) must be restored to

the above standards within 6 months.

Landscaping will be installed within one-year of the Certificate of Occupancy.

All developments must meet state and local groundwater and watershed standards.

4.) Parking and Loading

- A. All parking areas, driveways, drive-approaches, turnarounds and loading/unloading areas shall be paved with a concrete or bituminous surface to reduce noise, dust and potholes. Properly engineered drainage improvements, including underground storm sewers, designed to adequately collect, convey, and disperse storm water, shall be constructed with all paved surfaces.
- B. No more than 10% of the total paved-surface parking area required, shall be allowed in the front yard of any lot as determined by the City of Dowagiac Zoning Ordinance. In no instance shall off-street parking spaces be located closer than twenty (20) feet from any street right-of-way.
- C. Loading and unloading areas will be designed to permit the pickup and delivery of materials without impeding the public right of way. Design of the truck wells of loading area will not encroach upon the required front yard setback line. Truck wells or loading docks shall be located at the rear, or rear one-half (1/2) of the side elevation of any building. Docks or wells located on the front one-half (1/2) of a building side elevation must be screened from view by a wall or landscape row, a minimum forty-five (45) feet in length. No docks or wells shall be located on the building front elevation or facing front.
- D. Parking areas must be well maintained.

5.) Signage

Firms in the Industrial Park shall be permitted a single sign, in compliance with the provisions of Article 16 of the Dowagiac Zoning Ordinance for use in advertising or identifying the facility. Said sign shall be permanent and either affixed flat against the building wall or installed as a freestanding yard or lawn sign. Yard or lawn signs shall not exceed four (4) feet in height above the finished grade immediately below the sign. Outdoor advertising, billboards, neon or flashing lights are not permitted. The sign materials should be compatible with the appearance of the building's finished materials.

6.) Utilities

The installation of electric, telephone, and CATV distribution and transmission lines shall be underground within the described legal boundaries of the Dowagiac Industrial Park.

7.) Setback Specifications

No activities will take place within the setback areas referenced in the City of Dowagiac Zoning Ordinance, except sidewalks may be placed in the front setback area.

8.) Maintenance and Management

- A. The City of Dowagiac shall be responsible for the maintenance of the complete length of Woodhouse and Industrial Drive from curb to curb, as well as the storm water retention area (Outlot A) and the stormwater retention area that leads to the Peavine Drain running North and South adjacent to lot 26 and lot 21 with retention pond/wetland on lot 33 in the Dowagiac Industrial Park, in accordance with all local, county, state, and federal laws and regulations. Nothing herein contained shall be construed to limit or abrogate the power and ability of the City of Dowagiac to recover all or a portion of any expenses for maintenance, alteration, improvement, or capital replacement following initial construction, by special assessment or otherwise, in accordance with Michigan Law and Local Ordinance.
- B. Property owners in the Dowagiac Industrial Park may choose to form an Owners Association to provide advice to the City of Dowagiac in development and/or maintenance matters relating to the park. Such an organization shall be advisory only, and possess no authority not expressly provided it by resolution of the City Council of the City of Dowagiac.
- C. The terms, conditions, and provisions set forth herein shall be enforceable by any party having a property interest in any lot of record in said Dowagiac Industrial Park. The violation of any term, condition, or provision herein contained shall entitle any such owner or party in interest who is aggrieved thereby to seek enforcement by injunctive relief in a court of competent jurisdiction. In addition to such injunctive relief, the party so aggrieved shall be entitled to recover against any party violating any term, condition, or provision hereof, all costs and reasonable attorneys fees incurred in securing adherence to these restrictions.

9.) Restricted Uses

The following uses are restricted and forbidden within the subject lands:

- (a.) Retail commercial business

- (b.) Warehouses or facilities for storage of materials or goods not associated with, or secondary to the operations of a permitted use.
- (c.) New or used car dealers or storage lots
- (d.) Motels, hotels, or other lodging
- (e.) Auto repair and body shops
- (f.) Junk or salvage yards
- (g.) Car wash business
- (h.) Truck terminals
- (i.) Local and suburban transit terminals; but not including bus stops along a transit or pick-up route
- (j.) Public Works or Road Commission yards, garages or storage facilities
- (k.) Any other use not specifically permitted by the Dowagiac Zoning Ordinance as now existing or as amended, except conditional uses for which a conditional use permit is properly applied for and granted pursuant to the provisions of the Dowagiac Zoning Ordinance, as now existing or as amended.

10.) **Lighting**

Multi-directional "wall-pack" lighting, when provided, shall be "hooded" or shielded downward. All other building and parking lot lighting shall be "down" lighting; designed to minimize glare or spillover into adjacent lots, parcels or districts.

11.) **Pre-existing Conditions**

Any building, accessory building, fence, wall, enclosure, loading dock or well, parking lot or area, tree, shrub, or other landscaping element, or any other improvement existing in the aforesaid Dowagiac Industrial Park as of June 1, 1992 shall not be affected by, nor subject to, the terms, conditions limitations and restrictions herein contained.

Provided, however, that said land improvement may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a.) No such land improvement may be enlarged or altered in a way which increases its non-conformity with the restrictions as herein set forth.

