

463245

RESOLUTION APPROVING
 RESTATED DECLARATION OF
 PROTECTIVE COVENANTS FOR
 REMAINING UNDEVELOPED CITY
 OWNED PARCELS IN THE BERLIN
 NORTH BUSINESS PARK

Document No.

CITY OF BERLIN RESOLUTION #09-08

WHEREAS, the City of Berlin, a Wisconsin municipal corporation, has previously adopted protective covenants for its Berlin North Business Park as described in the following documents:

Resolution Approving Declaration of Protective Covenants in the Berlin Business Park dated April 12, 1994 and recorded in the Office of the Waushara County Register of Deeds on April 19, 1994 at 1:17 p.m. in Volume 446 of Records on pages 652-661 as Document No. 322770; and

Resolution Approving Declaration of Protective Covenants in the Berlin North Business Park dated September 14, 1999 and recorded in the Office of the Waushara County Register of Deeds on September 29, 1999 at 11:14 a.m. in Volume 536 of Records on pages 526-533 as Document No. 367011, recorded again on October 28, 1999 at 11:25 a.m. in Volume 538 of Records on pages 60-67 as Document No. 367741, and recorded again on November 18, 1999 at 12:02 a.m. in Volume 539 of Records on page 142 as Document No. 368206; and

(all the above documents are hereinafter collectively referred to as the "North Business Park Protective Covenants"); and

WHEREAS, by this Resolution, it is the intention of the City of Berlin Common Council to supersede and restate the North Business Park Protective Covenants for the purpose of amending some of the Covenants as they apply solely to those remaining undeveloped parcels in the City of Berlin North Business Park which are owned by the City of Berlin at the time of this Resolution (with the exception of certain developed City owned lots such as the City's treatment plant property), and

WHEREAS, by this Resolution, it is the further intention of the City of Berlin Common Council to cause those parcels in the City of Berlin North Business Park, currently owned by the City of Berlin but upon which the North Business Park Protective Covenants were never previously recorded, to be covered by the restated protective covenants as described herein; and

WHEREAS, unless specifically provided otherwise herein, it is expressly not the intention of this Resolution to cause application of the restated protective covenants as stated herein to parcels located in the City of Berlin North Business Park which are not owned by the City of Berlin at the time of this Resolution, or are City owned but are developed (such as the City's Sewage Treatment plant property), whereby such parcels shall continue to be subject to all previously declared North Business Park Protective Covenants currently applicable to said parcels; and

WHEREAS, it is further expressly not the intention of this Resolution to affect in any way the Resolution Approving Protective Covenant Concerning the City Farm dated March 9, 1993 and recorded in the Office of the Waushara County Register of Deeds on August 2, 1993 at 9:00 a.m. in Volume 436 of Records on pages 449-454 as Document No. 317716 (hereinafter "City Farm Resolution"), whereby said City Farm Resolution shall remain in full force and effect as to all parcels to which it applies, regardless of this Resolution, and in any circumstance where the City Farm Resolution conflicts with the terms of this Resolution, the terms of the City Farm Resolution shall control.

WAUSHARA COUNTY, WISCONSIN
 Received for record this
 29th day of September
 AD 2009 at 11:06 AM and
 recorded in volume 879
 of records page 489 - 496
 Document Number: 463245

Barbara Sturgeon

REGISTER OF DEEDS

Return to:

Chier Law Office LLC

111 South Pearl Street

Berlin, WI 54923

Tax ID Nos. 206-03457-0120, 206-03424-0230, 206-03424-0220, 206-03423-0621, 206-03421-0111, 206-03424-0145, 206-03455-0110, 206-03455-0000

3413

WHEREAS, the specific real property affected by this Resolution is particularly described on the attached Exhibit "A", hereinafter referred to as ("Remaining Park Property").

WHEREAS, the Remaining Park Property is intended for continued industrial and business use; and

WHEREAS, the City of Berlin is undertaking and intends to continually improve the Remaining Park Property and/or cause the same to be improved as an industrial/business park, or area, according to a general plan for the benefit of all subsequent owners of parcels in this area, as well as owners of adjacent parcels and improvements located in the general vicinity.

NOW THEREFORE, in consideration of the aforesaid and for the continuing purpose of preserving the value of the parcels contained within the Remaining Park Property as well as all lands located in the general vicinity, the City of Berlin hereby declares and provides that the Remaining Park Property shall be subject to the restrictions, covenants, and conditions as set forth in the Restated Declaration Of Protective Covenants For Remaining City Owned Parcels In The Berlin North Business Park attached hereto as Exhibit "B". All provisions of the North Business Park Protective Covenant's currently affecting the Remaining Park Property shall be superseded and replaced, as to the Remaining Park Property, by the provisions of this Resolution.

PASSED, APPROVED AND ADOPTED THIS 12th DAY OF May, 2009.

ROLL CALL VOTE:

5 AYES
0 NAYS
1 ABSENT

CITY OF BERLIN

BY Richard D. Schramer
Richard D. Schramer, Mayor

ATTEST:

Jodie K. Olson
Jodie K. Olson
City Clerk

AUTHENTICATION

Signature(s) Jodie K. Olson and Richard D. Schramer

authenticated this 24th day of September, 2009

[Signature]

Matthew G. Chier, State Bar #1026856

TITLE: MEMBER STATE BAR OF WISCONSIN

*Names of persons signing in any capacity should be typed or printed below their signatures.

THIS INSTRUMENT WAS DRAFTED BY:

ATTORNEY MATTHEW G. CHIER OR NATHAN P. OLSON
111 SOUTH PEARL STREET, BERLIN, WI 54923

ACKNOWLEDGMENT

STATE OF WISCONSIN)

GREEN LAKE COUNTY)

Personally came before me this _____ day
of _____, 200__, the above named*

_____ to me known to be the person(s) who executed the foregoing instrument and acknowledge the same.

Notary Public -- State of Wisconsin
My Commission expires/is _____

EXHIBIT "A"
RESOLUTION APPROVING RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR
REMAINING CITY OWNED PARCELS IN THE BERLIN NORTH BUSINESS PARK

LEGAL DESCRIPTION OF REMAINING PARK PROPERTY

All that in the NW $\frac{1}{4}$, the NE $\frac{1}{4}$, the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 34, Town 18 North, Range 13 East, in the City of Berlin, Waushara County, Wisconsin, described as follows:

Government Lot 7 in the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 34, North of the Fox River., excluding CSM's #1134, #2352, #3396 and #3868. Parcel Identification Number 206-03457-0120

That part of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Excluding CSM #4316. Parcel Identification Number 206-03424-0230

That part of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, also known as Lot 2 of CSM #4316. Parcel Identification Number 206-03424-0220

That part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, North of Power Drive, South of CSM #2721 and West of CSM #3447, Excluding Volume 699, Page 744. Parcel Identification Number 206-03423-0621

That part of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, also known as Lot 1 of CSM #5355. Parcel Identification Number 206-03421-0111

That part of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, also known as Lot 2 of CSM #5355, Excluding Document Number 456022, Volume 850, Page 326. Parcel Identification Number 206-03424-0145

That part of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, also known as Lot 3 of CSM #5355. Parcel Identification Number 206-03413-0110

That part of Government Lot 5, in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 34, North of the Fox River. Parcel Identification Number 206-03455-0000.

Exhibit "B"

RESOLUTION APPROVING RESTATED DECLARATION OF PROTECTIVE COVENANTS
FOR REMAINING CITY OWNED PARCELS IN THE BERLIN NORTH BUSINESS PARK

I. GENERAL PURPOSE AND CONDITIONS

The Remaining Park Property shall be subject to the conditions, covenants, restrictions, easements, and protections hereby declared to ensure proper use and appropriate development and improvement of each building site thereof; to protect the industrial and business environment in the Remaining Park Property and the City of Berlin North Business Park as a whole; to guard against the erection thereon of structures built of improper or unsuitable materials; to ensure reasonable development of said property and locations thereon of buildings; to control development of said property as a business park including but not limited to proper setbacks from the street, adequate free space between structures, adequate parking, and in general, to provide for a high quality of improvements on said property, to ensure that each building site will not adversely affect the general plan for physical development of the business park, nor adversely affect the health or safety of residents or properties in the Remaining Park Property, the North Business Park as a whole, and surrounding areas.

II. LAND USE

A) PERMITTED USES

- 1) Manufacturing, warehousing, and distribution activities in general compliance with the City of Berlin Zoning Code.

B) PROHIBITED USES

- 1) Stockyards
- 2) Commercial/retail trade
- 3) Service
- 4) Fresh animal kill operations
- 5) Slaughter house
- 6) Pre-finished tannery operations
- 7) Pulp mills
- 8) Rendering plant
- 9) Junkyard
- 10) Sauerkraut manufacturing facility
- 11) Similar or like-type uses or operations which are offensive due to odor, noise, or unsightly appearance

Said prohibitive uses may only be amended by a joint resolution adopted by the City of Berlin and the Town of Aurora and in no other manner.

III. ARCHITECTURAL AND DESIGN CONTROL

A) BUILDING MATERIALS

- 1) Any building constructed on a parcel in the Remaining Park Property shall be of a masonry construction, enameled steel, steel frame, or the equivalent thereof or better.
- 2) Pole building construction is prohibited.
- 3) No building shall be so similar to or so at a variance with its neighboring building as to constitute a depreciation to the immediate neighborhood. The color and design of buildings should be consistent with adjacent structures.
- 4) Fronts of buildings and particularly the office areas shall be improved with decorative masonry, glass, accented metal panels or the equivalent thereof or better.

- 5) All buildings including accessory buildings, shall not cover more than 50% of the lot.

B) LANDSCAPING

- 1) All open areas of any parcel not used for parking, driveways, or storage, shall be landscaped, graded, and sodded or seeded within twelve months (12) of occupancy.
- 2) Trees (deciduous, coniferous, or ornamental bushes) and plantings shall be placed at a minimum in the front of the building site.
- 3) All land shall be maintained and kept free of noxious weeds, rubbish and debris by the property owner. It shall be the responsibility of the property owner to keep the grass mowed in the City right-of-way abutting the owner's property up to the street pavement and to the property boundaries on the sides and rear.

If property is not maintained, the City of Berlin may serve notice to maintain and if not complied with in five (5) days, the City shall mow the area or otherwise do maintenance and add this cost to the lot owner's real estate taxes.

C) ON-SITE UTILITIES

- 1) Electrical, gas, and other service extensions shall be installed underground from the street right-of-way, or power company easement to the building.

IV. SETBACK AND LOT AREA REQUIREMENTS

- A) No part or portion of any building shall be erected, constructed, or extend nearer than forty (40') feet of the right-of-way of any public street or highway.
- B) Not less than twenty (20%) percent of the front setback area shall be maintained as decorative areas, grass, and plantings.
- C) No part or portion of any building shall be erected, constructed, or extended nearer than twenty (20') feet to any rear lot line or side lot line.

V. OFF-STREET PARKING AND LOADING REGULATIONS

- A) Sufficient off-street parking shall be provided for employees, customers, and visitors.
- 1) Total parking area shall be a minimum of one hundred eighty (180) square feet per vehicle.
- 2) A minimum parking ratio of two (2) spaces for each three (3) employees shall be required on the maximum employment labor shift of the grantee.
- 3) All parking areas and drives shall be improved with asphalt, concrete, or the equivalent within eighteen (18) months from the time of the occupancy of the building.

Any property owner may obtain a waiver from this requirement by written approval from all other City of Berlin North Business Park land owners, and upon review and approval by the City of Berlin Plan Commission. Once granted, the waiver may be rescinded at any time by the City of Berlin Plan Commission, but only upon written request by any land owner in the City of Berlin North Business Park.

- 4) Outside storage areas do not need to be paved but are to be maintained in a dust free or low dust manner so as to not create a nuisance for neighboring properties.
- 5) No parking shall be permitted nearer than fifteen (15') feet from any street right-of-way.

- B. Sufficient loading and maneuvering areas shall be entirely contained on site and behind the property line. No vehicle shall be allowed to protrude beyond the property line while loading or unloading.

VII. SIGNS

- A) Billboards are not permitted
- B) A sign identifying the name, business, or products of the person or firm occupying the premises is required.
- 1) The sign shall be no larger than seventy-two (72) square feet with a perimeter of less than fifty-four (54) feet. Sign shall not exceed ten (10') feet in height.

VIII. SCREENING REQUIRED

- A) All material or products stored outside the building shall be screened by a wall, fence, or evergreen planting to limit exposure by a minimum of 55%, built to or maintained at a height equivalent or greater than the stored material.
- 1) Such screening shall comply with the front yard setback requirement or be in line with the front of the building whichever is greater.
 - 2) Side yard and rear yard storage is permitted with proper screening within the setbacks provided for buildings on the premises.
- B) Screening shall also be required in addition to or in lieu of that required under sub paragraph A) along all property boundaries, where the adjacent property is zoned differently than the subject property, as necessary to preserve the integrity and zoning classification of the adjacent property. The boundary screens may consist of existing or planted vegetation, fences, walls, earth berms, or similar techniques. Plant screens shall be sufficient to provide a year-round screen within five (5) years of installation.

IX. APPROVAL OF PLANS

- A) No building shall be erected on any building site in the park until the plans for such building or improvement, including site plan, building plan, and specifications have been approved by the Plan Commission of the City of Berlin. This information can be presented at the time land is purchased in its preliminary format. The Plan Commission shall approve or disapprove such plans with respect to conformity with these restrictions and other applicable enactments of the City, and with respect to harmony of external design and the land use as it affects property within and adjacent to the park. Additions and alterations shall be in conformance with applicable building codes, and if said addition plans exceed 50% of the existing floor area, the Plan Commission shall be made aware of the alteration. Failure of the Commission to act upon such building or improvement plans within forty-five (45) days after submission to the City Plan Commission, shall constitute approval of such plans under these covenants.

X. COMMENCEMENT AND COMPLETION OF CONSTRUCTION AND REPURCHASE OPTIONS.

- A) Construction of improvements on any parcel purchased out of the Remaining Park Property shall commence no later than one hundred eighty (180) days after purchase of the parcel and shall be completed within one (1) year after purchase. In the event this requirement is not met, the City of Berlin shall have the option to nullify the original sale transaction and demand title be conveyed back to the City of Berlin. The City of Berlin shall return all consideration paid, less all actual costs incurred by the City related to the sale transaction, including actual attorneys fees incurred. The restriction described in this paragraph may be waived or modified by the City of Berlin Plan Commission when an existing owner of a parcel in the City of Berlin North Business Park, with a building located thereon, purchases adjoining land for purposes of expansion. Further, this provision shall be waived if the contract for the purchase of the parcel from the City sets forth different time limits for commencement or completion of improvements.

- B) In the event any owner of a parcel elects to sell any vacant parcel in the Remaining Park Property, it shall first be offered for sale, in writing, to the City of Berlin at the parcel's fair market value, to be determined by a Wisconsin licensed commercial real estate appraiser selected and hired by the City of Berlin. The City of Berlin shall have sixty (60) days from the date of receipt of the offer to sell to complete the appraisal and to accept or reject the offer, unless an extension of time may be mutually agreed upon and set forth in writing. Acceptance or rejection of such offer shall be indicated by resolution adopted by the Common Council of the City of Berlin. If the offer to sell is accepted by the City of Berlin, the purchase price shall be payable in cash (or cash equivalent) at closing. The purchase shall include all of the seller's interest in the subject property, and shall exclude any personal property of the seller. The transaction shall be subject to standard real estate tax and other closing prorations. The subject property shall be sold "AS IS". Upon the payment of the purchase price, the seller shall convey the subject property to the City of Berlin by warranty deed free and clear of all liens and encumbrances, except municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and other municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing, provided none of the foregoing prohibit the continuing use of the subject property, which constitutes merchantable title for purposes of the transaction. The seller shall further be required to execute the documents necessary to record the conveyance. The seller shall provide prior to closing a commitment for title insurance to the City of Berlin in the amount of the purchase price on a current ALTA form issued by an insurer licensed to issue title insurance in Wisconsin. The title represented shall be merchantable, subject only to standard title insurance exceptions. The seller shall pay all costs of said title insurance and shall pay the transfer fee for the transaction. All special assessments and charges incurred prior to closing shall be obligation of the seller. The closing shall take place at the office of the City of Berlin's attorney no later than 30 days after the adoption of the City of Berlin resolution accepting the offer to sell. If the City of Berlin fails to act on such offer of sale within the requisite sixty (60) day period or rejects said offer, the owner may then sell the offered parcel to any third party and the City of Berlin's rights under this paragraph shall be null and void. All other protective covenants, and those remaining covenants as contained herein, shall remain in full force and effect upon said lands, and the use of said lands by any subsequent purchaser shall continue to be subject to applicable zoning, ordinances, restrictions, and regulations relating to the use of said premises at the time of such sale.
- C) Hereafter all existing land owners purchasing additional land in the Remaining Park Property shall be bound by these restated covenants for the newly acquired property as well as for the land owner's adjacent property if the newly acquired property in the Remaining Park Property is used for an expansion of the land owner's existing business on the adjacent property.
- D) Each parcel shall be conveyed subject to the within restrictions and covenants all of which are to run with the land and shall be binding on all parties and all persons claiming under them.

XI. ENFORCEMENT

- A) The requirements and restrictions set forth herein shall be enforceable by the City of Berlin Common Council, or its designees, upon recommendation from the City of Berlin Plan Commission, for the maximum period allowed by law and shall be enforceable by:
- 1) Injunctive relief, prohibitive or mandatory, to prevent breach of or to enforce performance or observance of these standards and requirements; or
 - 2) Money judgment for damages by reason of the breach of these standards; or
 - 3) Both (1) and (2) above.
 - 4) Failure of the City of Berlin to enforce any provisions contained herein upon the violation thereof, shall in no event be deemed to be a waiver of the rights to do so to any subsequent violation.
 - 5) The City of Berlin Common Council, upon review and recommendation by the City of Berlin Plan Commission, may grant variances to the provisions of these standards and

requirements in cases where, by reason of extraordinary and exceptional conditions of any site or circumstances, would result in peculiar and practical difficulties or exceptional or undue hardship upon the owner of any building site, or where otherwise deemed appropriate by the City of Berlin Common Council.

- 6) Invalidation of any of the provisions of these standards and requirements, whether by court order or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.