

Declaration of Protective Covenants
Coleman Industrial Park
Coleman, Michigan

This declaration constitutes the land use restrictions and covenants of Coleman Industrial Park ("Industrial Park").

WHEREAS, the Economic Development Corporation of the County of Midland (EDCCM), "Grantor" herein, has purchased certain real property as further described in Exhibit A of this Declaration; and

WHEREAS, Grantor wishes to develop Industrial Park as a quality industrial park and to dispose of said property in such a fashion as to carry out certain of Grantor's corporate purposes relative to assisting industrial development, creation of job opportunities, enhancement of the community's economic base and to minimize the possibility of long-term community deterioration.

NOW, THEREFORE, Grantor hereby establishes certain conditions, covenants, restrictions, easements, reservations and other provisions of this Declaration for the purposes set forth herein and in accordance therewith, Grantor declares that the real property described in Exhibit A is and shall be held, improved, developed, transferred, sold, conveyed, dedicated, leased, subleased and occupied subject to the conditions, covenants, restrictions, easements, reservations and other provisions of this Declaration set forth below, this the ____ day of _____, 200_.

Article I - Property Covered

These restrictions and covenants cover all the real property set forth in the legal description attached as Exhibit A.

Article II - Definitions

- A. "EDCCM" shall mean the Economic Development Corporation of the County of Midland, and its successors or assigns.
- B. "Finished Materials" shall mean face brick, glass, ornamental stone, factory pre-finished metal panel with a 20-year finish, decorative concrete masonry units or other exterior grade finished materials. Decorative concrete masonry units are those units, which are designed specially with ornamental facing and are painted, stained or factory pre-colored. Wood will not normally be approved by the Economic Development Corporation of the County of Midland (EDCCM) as a finish material but subject to the approval of the (EDCCM), wood may be used as an incidental material to the design. The final decision as to whether or not a particular material qualifies as "finish" shall be made by the EDCCM.

- C. "Improvement" shall mean any building, structure, fence, wall, exterior sign, driveway, parking area, loading area, storage area, landscaping, sidewalk, utility, drainage area or other improvement and all alterations, modifications, changes, additions, deletions, rebuilding or restoration to any improvement.
- D. "Occupant" shall mean any person or entity using, maintaining, occupying or constructing improvements upon any lot pursuant to any lease, occupancy agreement or other form of agreement (whether oral or written) with the owner. All of the obligations of an owner under these restrictions shall equally apply to an occupant whether or not the occupant is referred to in the particular provision.
- E. "Owner" or "Owners" shall mean the record owner whether one or more persons or entities of the fee simple title to any of the parcels of land or lots comprising the properties, including land contract vendees (whether or not of record) but excluding any land contract vendor or mortgagee unless and until such land contract vendor or mortgagee shall have acquired fee simple title pursuant to foreclosure or otherwise in which case the land contract vendor or mortgagee shall be included as an owner. When more than one person or entity has an interest in the fee simple title to any lot, the interest of all such owners shall be that of a single owner collectively or jointly or severally in whichever case will best achieve the purposes of these restrictions.
- F. "Plans" shall mean all plans, drawings, specifications, renderings and samples required under these restrictions for any improvement including all alterations, modifications, amendments, changes, additions and deletions to such plans.
- G. "Pole Building" shall mean, a metal clad structure most often utilizing wooden poles and trusses for support.
- H. "Property" or "Properties" shall mean the real property located in the City of Coleman, Midland County, Michigan as set forth in Exhibit A including any parcel, lot or portion thereof.
- I. "Property" shall mean Coleman Industrial Park and "Lot" shall mean any lot within said property.

Article III - Plan and Site Approval

- A. No improvement shall be commenced upon the property or any lot until complete plans have been first submitted to and approved in writing by the EDCCM. The plans shall describe the construction of the improvement in detail according to the items listed on the attached checklist of site plan requirements.
- B. All plans shall be in harmony with the architectural and aesthetic scheme established by the EDCCM for the property. If a disagreement on the question of suitability and harmony shall arise, the decision of the EDCCM shall be final.

A copy of all plans and amendments thereto shall be submitted to the EDCCM for its permanent records, without costs or charge to the EDCCM. The EDCCM shall have the right to refuse to approve any such plans or any part thereof including any material or color scheme that is not suitable or desirable in its opinion for aesthetic or site plan development reasons. The requirement to submit plans for approval extends and applies to each and every alteration, modification, amendment, change, addition or deletion to any plans previously approved by the EDCCM. All property and improvements shall be maintained in compliance with the plans and the owner and the occupant shall be responsible to correct any deviation from approved plans.

- C. In passing upon such plans, the EDCCM shall have the right to take into consideration the suitability of the proposed building, structure, alteration or improvement to be constructed on the proposed site and the harmony thereof as planned in view of the outlook from the adjacent or neighboring properties, as well as views from public streets or bridges.
- D. The EDCCM, its successors or assigns, shall not be liable in damages to any person submitting plans for approval or to any owner or owners of land covered by this instrument by reason of mistake in judgement, negligence or nonfeasance of itself, its agents or employees arising out of or in connection with the approval or disapproval or failure to approve any plans or the enforcement of these restrictions whether or not such enforcement is successful or the failure to enforce these restrictions.

Article IV - Uses

- A. Permitted Uses - The property is being developed as an industrial development and all lots or parcels shall be used for only the following purposes:
 1. Research, design and/or development of pilot or experimental processes or products including laboratories, training facilities and light assembly operations.
 2. Single and multi-tenant office, R&D and industrial buildings including sales and manufacturers representative's offices.
 3. Data and word processing and related services.
 4. Compounding, processing, packaging, assembly, treatment or distribution of finished or semi-finished products from previously prepared materials.
 5. Any uses or operations reasonably required to maintain or support the permitted uses described above including maintenance shops, power generating and security operations, provided that these support uses do not generate any adverse environment.
 6. Other uses similar to the above as allowed by right or with a special use permit allowed by zoning regulations.
- B. Uses Not Permitted - No noxious or offensive trade or activity shall be carried on, nor shall anything be done on the property or any lot which may become an annoyance **or**

nuisance to the area hereby restricted by reasons of noxious, offensive, unhealthy and harmful odors, fumes, dust, smoke, waste, noise or vibration beyond that normally and reasonably expected in an industrial area and contemplated by the restrictions.

- C. Specific Uses - The following specific uses shall not be permitted in any event:
1. Asphalt or tar manufacturing or refining.
 2. Manufacture of gas, coke or coal tar products.
 3. Slaughtering of animals for the reduction or recovering of products from dead animals or animal offal or garbage.
 4. Blast furnaces.
 5. Petroleum refining or other similar factories or uses.
 6. Auto wrecking, salvage yards, junk yards, storage for baling of waste or scrap paper, tags, scrap metals, bottles or junk.
 7. Central mixing plant for asphalt, mortar, plaster or concrete, except as may be required in connection with paving of roads or other construction on the property.
 8. Heavy stamping operations and foundry operations in facilities of any size.
 9. Manufacturing of corrosive acid or alkali cement, lime or gypsum.
 10. Smelting of copper, iron or zinc ore.
 11. Any other use causing obnoxious fumes, smoke, noise and/or unsightly appearance within the park.
 12. Mini warehouses or storage.

Article V - Building Construction

- A. All construction shall be completed within one year after construction is commenced unless an extension of time is granted in writing by the EDCCM.
- B. All buildings shall be constructed primarily of steel or other metal, masonry and glass. No pole buildings are allowed. All sides of any building must be finished materials as defined in paragraph D. The view of the front façade must not contain HVAC or mechanical equipment.
- C. Any finished materials requiring field-applied finish shall be finished with sixty (60) days from the date of occupancy.
- D. All buildings shall be constructed in accordance with all applicable laws, statutes, ordinances, codes, rules and regulations of all governmental agencies having jurisdiction thereof and in a manner so as to have the ability to withstand the normal causes of deterioration with normal maintenance procedures.
- E. Maximum ground level building coverage on any lot shall not exceed 40% of the total square footage of the lot.

Article VI - Setbacks and Greenbelt

- A. No building or parking shall be located nearer than fifty (50') feet to any front street right-of-way line ("Front Yard Setback"). The front yard setback shall be primarily maintained as a greenbelt. The front yard setback shall only be used for driveways, walks or other means of access to the interior of the property or lot and for a minimum amount of parking for handicapped visitors. The amount of such parking and its location and the location and specifications for driveways, walks or other permitted improvements shall be approved by the EDCCM as part of the site plan approvals.
- B. Greenbelts and detailed landscaping shall be required for the development of each lot and shall be required to be completed contemporaneously with the completion of building improvements.
- C. The minimum side yard ("Side Yard Setback") is twenty (20') feet or the distance of the minimum side yard required by the zoning ordinance of the City of Coleman, whichever is greater. No use of side yard setback will be permitted except for greenbelt.
- D. The portion of the described setback not occupied by permitted improvements constructed in accordance with plans approved by the EDCCM, must be landscaped with lawn, shrubbery, trees, bushes, vines or suitable plants, detailed plans of which must be approved in writing by the EDCCM. All owners, lessees, tenants or users of any parcel on the property must maintain such landscaping in a condition so as to present a well-kept and pleasing appearance.
- E. No building shall be constructed nearer than forty (40') feet from any rear property line or lot line or the distance of the minimum rear yard required in the zoning ordinance of the City of Coleman, whichever is greater.

Article VII - Other Development Standards

- A. Fence - No fence of any kind shall be constructed in front of any building without the written consent of the EDCCM. No fence of any kind shall be constructed within the setback described in paragraph VI A.

Signs - No billboards or other freestanding, building or roof-mounted advertising signs shall be permitted. All other signs shall be in accordance with the current zoning ordinance of the City of Coleman.
- B. Screening - All solid waste dumpsters shall be completely screened from public view in a manner and at a location approved by the EDCCM. Mechanical equipment, including rooftop HVAC, cooling towers and all other rooftop equipment shall be constructed to limit the view of such equipment from the front and rear yards to the greatest extent possible.

Article VIII - Parking Areas and Loading Zones

- A. Each owner must provide adequate off-street parking facilities so as to eliminate any necessity for parking vehicles on public streets within the property except as herein provided. The off-street parking provided shall be sufficient to satisfy any zoning ordinance, regulation or rule of the City of Coleman governing parking. No parking shall be permitted within the front yard setback provided in paragraph VI A.
- B. The location and adequacy of all parking areas shall be determined and approved by the EDCCM in connection with its review of the plans. Parking shall be in the rear of the building wherever possible. Each premise shall provide one (1) off-street parking space for each employee on the largest expected working shift and at least five (5) spaces designated for visitors.
- C. All driveways, parking areas and loading areas shall be paved with concrete, asphalt or other hard surface material.
- D. The front yard area between the street right-of-way line and the front yard setback line when it abuts a parking area shall be adequately landscaped by the use of berms, trees or other similar means, as approved by the EDCCM.
- E. All parked and/or stored vehicles must bear a current license plate.

Article IX - Outdoor Storage

- A. Outdoor storage of equipment, raw materials, semi-finished or finished products will not normally be allowed. However, special permission may be obtained from the EDCCM under such conditions as it shall deem necessary to prevent nuisance or other adverse conditions and only when such outdoor storage is necessary and incidental to the operations being carried on in the building located upon the site. No storage shall be permitted on the setback required in paragraph VI A and all storage shall be shielded by fence, wall or landscaping approved by the EDCCM, so as to effectively screen the view of such storage area from public roads and adjoining properties.
- B. No waste material, rubbish or discarded matter of any kind shall be permitted to be stored in open areas except in containers approved by the EDCCM, nor beyond a time reasonably required to arrange for removal. All such material shall be screened in accordance with the City of Coleman ordinance or requirement.

Article X - Antennas, Communications Lines and Utilities Lines

No antenna, tower, dish or other radio, television, transmission or communication device shall be erected on any property, lot or building for any purpose without the prior, written approval of the EDCCM. All lines or wires used for communication, power, sound or electrical current or other utilities servicing any property, lot or building shall be constructed and maintained underground.

Article XI - Property Maintenance

- A. All owners and occupants of the property or any lot shall maintain all improvement in good and sufficient repair and shall keep such painted, lawns cut, shrubbery trimmed, windows glazed and otherwise maintain the property, lot and improvements in an aesthetically pleasing manner and in the condition approved by the EDCCM, reasonable wear and tear excepted.
- B. Any improvement that is damaged by the elements, by vehicles or from fire or any other cause shall be restored and repaired as promptly as the extent of the damage will permit.
- C. Buildings within this development that may happen to become vacant for any reason shall be kept locked and the windows shall be secured in order to prevent the entrance thereto by vandals.
- D. In the event of the violation of any of the restrictions set forth in this section, the EDCCM or its successors or assigns shall have the right to record with the Midland County Register of Deeds an affidavit identifying any violation of these restrictions. The EDCCM shall have no liability for the recording of such affidavit so long as the affidavit was recorded without malice and with a reasonable belief that a violation existed. The EDCCM or its successors or assigns shall also have the right in the event of a violation of these restrictions to sue for the enforcement thereof and the right (with or without instituting such suit) to go upon the property and improvement to eliminate nuisance conditions, to mow lawns or trim shrubbery or do anything necessary to repair or maintain the property and improvement consistent with the restrictions and the aesthetic standards of the development for the benefit of other owners and occupants. The cost of any such work and any cost or expense incurred by the EDCCM in connection with such work shall be immediately due and payable upon written notice thereof being given by the EDCCM to the owner and occupant. In the event of nonpayment by the owner and/or occupant, the EDCCM shall be entitled to exercise the rights and remedies provided for herein together with any other rights and remedies permitted by law.

Article XII - Liability of Owner for Hazardous Substances

Each owner and occupant of the properties and lots on the property shall be jointly and severally liable from and after the time ownership and/or occupancy is acquired for any use, generation, manufacture, refining, transportation, treatment, storage, handling, disposal, transfer, production or processing of hazardous substances upon or in connection with each property or lot owned or occupied by such owner and occupant. Hazardous substances shall include those defined as such in Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, MCL Section 299.501 *et seq* or otherwise regulated by any governmental agencies having jurisdiction thereof ("Hazardous Substances") and each owner and occupant shall comply with such laws. In the event of a spill, discharge or violation of any law governing hazardous substances, each owner and occupant owning and/or occupying any lot or lots upon which a spill, discharge or violation has occurred shall be liable to the EDCCM and all other owners for cleanup costs and all other damages caused to any other property, lot, improvements,

wetlands and detention ponds, roads, utilities, common properties and ground water aquifer. The EDCCM and its successors or assigns shall not be liable for any claims, damages, liabilities arising under this paragraph and shall be an additional "Named" insured on any comprehensive liability/property damage policy carried by the owner and occupant engaged in such hazard substances. Further, the EDCCM requires a copy of such insurance policy to be filed with the EDCCM in such terms and in such amounts as would be agreeable to the EDCCM.

Article XIII - Interpretation of Restrictions

It is specifically provided and the acceptance by any person of title to any of the property or lots on the property shall constitute the agreement of such person, that in the event of disagreement as to the precise meaning of any term contained herein that the interpretation of the EDCCM or its successor in interest shall be final. It is specifically provided and agreed that the usual rule requiring written documents to be construed against the party preparing such documents shall not apply to the restrictions.

Article XIV - Enforcement

All of the provisions of these restrictions shall be specifically enforceable and the EDCCM shall have the first right to seek such enforcement but shall have no liability for its failure to do so. In the event, the EDCCM fails to seek the enforcement of these restrictions within thirty (30) days after a written request from any owner, such owner or any other owner or owners shall have the right to enforce these restrictions unless the EDCCM has granted a variance pursuant to paragraph 20 hereof. All rights of enforcement hereunder shall include the right to sue for specific performance, including legal actions for damages. The failure of the EDCCM to enforce any of these restrictions at the time of violation shall in no event be deemed to be a waiver of the right to enforce such as to any continuing or subsequent violation.

Article XV - Binding Effect

The covenants set forth herein shall run with the land and bind the property and the lots and all persons owning, occupying or otherwise having an interest therein, their heirs, successors and assigns, and all parties claiming by, through or under them, with each of them agreeing to confirm to and observe these restrictions.

Article XVI - Amendment of Restrictions

The EDCCM without the consent of any owner or any other person or entity whatsoever, whether or not such person or entity shall now or hereafter have any interest in any lot as an owner, occupant, mortgagee or otherwise, shall have the right on one or more occasions to amend these restrictions for the purpose of deleting, modifying, altering or supplementing the restrictions in any manner, provided that the EDCCM shall not amend these restrictions in a manner which would prevent the continued use of an existing building or structure for the use or operation previously approved by the EDCCM. The amendment describing the deletion, modification, alteration or supplement shall be signed by the EDCCM and recorded with the Midland County Register of Deeds.

Article XVII - Variance

The EDCCM, in its sole discretion, is hereby authorized and empowered to grant reasonable variances from the provisions of these restrictions in order to overcome practical difficulties and to prevent unnecessary hardships in the application of such provisions, provided such does not materially injure any of the property or improvements on the property. No variances granted shall constitute a waiver of any provisions of these restrictions as applied to any other person, property or circumstance.

Article XVIII - Severability

In the event any one or more of the restrictions are declared invalid by a final decree of a court or competent jurisdiction from which no further appeal may be taken, such restriction or restrictions shall be deemed severed and deleted from these restrictions and all remaining restrictions shall be preserved and continue in full force and effect.

Article XIX - Governing Law

These restrictions shall be governed by and interpreted in accordance with the laws of the State of Michigan and may be subject to more stringent restrictions under the Zoning Ordinance and Building Codes of the City of Coleman.