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By: KSS, Deputy

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MOORHEAD CITY
PO BOX 779
MOORHEAD, MN 56560

J. Bonnie Rehder, Recorder
CLAY County, MN

**DECLARATION OF INDUSTRIAL
STANDARDS AND PROTECTIVE COVENANTS
FOR McCARA THIRD ADDITION**

THIS DECLARATION, made this 23rd day of November, 2010, by the City of Moorhead, with its principal place of business at Moorhead, Minnesota (hereinafter called "City").

WHEREAS, the City is the owner of the premises lying and being in the County of Clay, State of Minnesota, the legal description of which is described on Exhibit "A" (hereinafter "Park"); and

WHEREAS, the City is desirous of subjecting said premises as described herein to the conditions, covenants, restrictions, reservations hereinafter set forth to insure proper use and appropriate development and improvement of each building site therein contained so as to (hereinafter "Criteria Standards"):

- a) Protect the owners of building sites against such improper use of surrounding buildings as will depreciate the value of their property.
- b) Guard against the erection thereon of structures built of improper or unsuitable materials.
- c) Insure adequate and reasonable development of said property.
- d) Encourage the erection of attractive improvements appropriately located to prevent an inharmonious appearance and function.
- e) Provide adequate off-street parking space and loading facilities, sign controls, set-backs; and in general to provide a development that will promote the general welfare of the McCara First Addition premises.

NOW, THEREFORE, the City hereby declares that the premises as described herein, shall be developed in accordance with the following standards and guidelines in line with the aforementioned Criteria Standards which shall apply to each and every owner and successor in interest thereof, and are imposed upon said premises as a servitude in favor of the City for the benefit of the entire premises. Further, such conditions, covenants, restrictions and reservations shall operate as equitable restrictions and covenants passing with the title to said premises and with each and every part and parcel thereof and are as follows:

ARTICLE I. DEFINITIONS OF TERMS

The following terms and words as used in the context hereinafter shall be defined as follows:

- a) **Building Site** – any lot, or portion thereof, or two or more contiguous lots or portions thereof; or a parcel of land upon which an industrial or commercial building or buildings and appurtenant structures may be erected in conformance with the requirements of this Declaration.
- b) **Improvement** – shall mean and include all construction necessary or appurtenant to conditioning a Building Site for occupancy by a permitted use and shall include but not be limited to buildings, parking areas, loading areas, fences, lawns, landscaping and lighting.
- c) **Owner** – party, or parties, their heirs, successors or assigns who are in title or claim title to any part or parcel of the premises, including holders of mortgages on the property.
- d) **Street** – shall mean a right-of-way dedicated to the public for street or road purposes or in respect to which an easement has been granted to the public for street or road purposes.
- e) **Building** – shall consist of the main building and all accessory buildings and physical structures used in connection therewith.
- f) **Park** – shall consist of all of the land described in and located within the boundaries of the Plat of McCara First and Second Additions.

ARTICLE II. GENERAL PROVISIONS

- a) **Development Control Board:**

A Development Control Board (the Board) shall review all planned improvements on the property to insure compliance with these covenants. The Moorhead Economic Development Authority Board shall serve as the Board until sixty percent (60%) of the land in McCara Third Addition is developed. After sixty percent (60%) of the land in McCara Third Addition is developed, the Development Review Board shall then consist of three members of the City and two landowners with the City members on the Board being appointed by the City, and the landowners on the Board being elected by a majority

vote of the landowners in the Park. The Board shall be advisory to the City and shall meet at the call of the City to assure prompt review of plans, and shall keep written minutes of its deliberation and findings, and shall make recommendations on said plans to the City within thirty (30) days from the time plans are received by the Board. A majority of the Board shall be necessary to constitute a quorum for the transaction of business of the Board. The acts of a majority of the Board present at a meeting at which a quorum is present shall be the act or acts of the Board. The City reserves the right to over-rule the Board and to refuse approval of any plans, specifications, or proposed land uses if such improvements are, in the opinion of the City, contrary to the best interest of the Park. For purposes of this provision, the term "owners" does not include mortgagees.

(b) Review Procedure:

No building, fence, wall, sign, advertisement, road, loading facility, storage facility, parking area, site grading, landscaping, disposal facility, or any other improvement to the Park shall be constructed on or added to, excepting changes made inside a proposed or existing building, without the approval of the City. Complete detailed plans and specifications for the proposed improvements, showing the nature, kind, shape, dimensions, materials, colors, lighting, siting, grading and landscaping or alterations to existing facilities shall be submitted to the City, before construction begins. The City shall approve or disapprove said plans within thirty (30) days from the date complete specifications and plans are received by the City. In the event no actions is taken on said plans by the City within said thirty (30) day period, said plans will be deemed to have been approved by the City. If approval is granted, a copy of the plans and specifications shall be retained on file by the City.

c) Amendments, Modifications, and Termination:

Each of the conditions, covenants, restrictions and reservations contained herein shall continue and be binding upon the premises and the owners thereof and upon each of them and all parties and all persons claiming under them for a period of thirty (30) years from the date of filing of record, and shall be automatically extended in their entirety for successive periods of ten (10) years, unless amended, modified or terminated as hereinafter provided. These covenants may be amended, modified, or terminated by a written declaration of the City, accompanied by statements of concurrence by owners of a majority of the then building sites within the Park, provided that such amendment, modifications or termination shall not retroactively affect improvements previously installed under this covenant.

d) Inspection:

The City shall have the right, at any reasonable hour upon twenty-four hours' notice, to enter and inspect any property for compliance with these covenants.

e) Enforcement of Regulations:

When and if a property owner is alleged to be in violation of the covenants as herein described, he shall be served notice of the alleged deficiency by the City and given thirty days to submit to the City a plan to correct the alleged violation or deficiency which plan shall contain a proposed starting and completion date to remedy the non-compliance. The City shall have the authority to correct the condition at the owner's expense and to take such legal action as it deems appropriate.

f) Variances:

Variations from these covenants may be allowed by the City at its discretion. Variance applications shall be submitted to the City and shall include plans and specifications as described in paragraph b. above. The City's written approval shall be obtained prior to commencing work on the project.

g) Enforcement:

1) The standards set forth herein shall be enforced only by the City for the maximum period allowed by law and shall be enforceable by the City by:

- i) Injunctive relief, prohibitive or mandatory, to prevent the breach of or to enforce the performance or observance of these standards and requirements.
- ii) A money judgment for damages by reason of the breach of these standards, or
- iii) Both (1) and (2).

2) Failure of City to Enforce: The failure of the City to enforce any provisions of the standards and requirements contained herein upon the violation thereof shall in no event be deemed a waiver of the rights to do so as to any subsequent violation.

h) Waiver of Invalidation:

Invalidation by court adjudication of any provision of these covenants shall affect only that provision, and all other provisions shall remain in full force and effect. When there is a conflict between these covenants and any city ordinance, state or federal statute or regulation, the most restrictive ordinance, statute or regulation will apply.

ARTICLE III. DEVELOPMENT STANDARDS

a) Building Site Size:

The minimum building site size shall be one acre. There is no maximum building site size restriction. Subdivision of any lots must first be approved by the City and done in accordance with the applicable subdivision and platting regulations of the City of Moorhead and the State of Minnesota.

b) Building Site Coverage:

The maximum portion of a building site that may be covered by buildings shall be forty (40) per cent of the total ground area of the site. Minimum building size shall be fifteen percent (15%) of the total ground area of the site.

c) Setbacks:

1) Buildings:

All buildings (main, accessory buildings, or other physical structures) shall be set back a minimum of fifty (50) feet from the right-of-way line of the road which provides access to the property. The access road shall be designated as the front of the property. The rear of the property shall be located opposite the front. The remaining boundaries of the property shall be designated the sides. All buildings shall be set back a minimum of twenty (20) feet or one-half the height of the building, whichever is greater, from the side property lines and rear property lines, except buildings on lots adjacent to a lead track which may eventually be served by rail shall be set back a minimum of thirty (30) feet from the rear property line adjacent to the lead track to permit construction of railroad siding paralleling the lead track. Any and all applicable easements shown on the plat of the park must be recognized unless released by the City as hereafter provided.

2) Fencing, Screening or Other Barriers:

All fencing or other barriers shall be set back a minimum distance of ten (10) feet from all property lines.

d) Easements:

A utility easement shall be reserved on such side lot lines and on such front and rear lot lines as designated on the plat. The City reserves for itself, its successors and assigns a permanent easement under, along, and over the easements as shown on the plat of said premises for the carrying of utilities, water, sewage or railroad trackage, and for the maintenance of such facilities, and the City is hereby given the power and authority to execute deeds or other necessary documents releasing or conveying any such rights that it may deem advisable or necessary.

e) Site Grading:

The finished grade of any building constructed in the Park shall be a minimum of thirty inches above top of curb. Site grading shall be designed to provide for uniform storm water drainage to the storm sewer system from all lots in the Park. No excavation for stone, gravel or earth shall be permitted unless such excavation is made in connection with the erection of a building or construction of facilities or a landscape feature as part of a project approved by the City.

f) Underground Electrical and Telephone Facilities:

No building or structure located on land in the park shall be served by other than underground electric and telephone distribution facilities. Poles, wires, or other above-ground electrical or telephone distribution facilities may be temporarily installed during the constructions of buildings or structures, in emergencies or during the construction or repair of the underground system. For the protection of underground cables and facilities, the grade or contour of the land above and adjacent to said facilities shall not hereafter be substantially increased, decreased or otherwise changed or altered without the written consent of the utility company providing such service.

ARTICLE IV. PLANS AND BUILDINGS

a) Architectural Standards:

Buildings shall be designed to be aesthetically pleasing and the proposed exterior treatment shall be submitted to and approved by the City.

b) Used Structures:

Previously used structures may not be moved onto the property as part of any development. However, new structures which are pre-manufactured and designed for transportation to the use site will be allowed following approval of the City.

c) Approval of City:

No improvements shall be erected, placed or altered on any building site until the building or other alteration plans, specifications, including elevations and/or architect's rendering, and a plat plan showing the location of such improvement on the particular building site, including parking, loading and landscape plans, have been submitted to and approved by the City.

d) Equipment on Roof:

All buildings shall be constructed so as to screen all electrical and mechanical equipment on the roof or to screen all such equipment mounted at ground level by screening approved by the City.

ARTICLE V. PROPERTY MAINTENANCE REQUIREMENTS

- a) No noxious or offensive trades, services or activities shall be conducted on the premises, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners by reason of unsightliness or excessive emission of odors, fumes, smoke, vibration, dirt, dust, glare, wastes or noise.
- b) **Keep Site Clean:**
The building site shall be at all-times kept free from debris, paper, excess of leaves, branches and trash of all kinds.
- c) **Drainage of Surface Water:**
Nothing shall be done on any building site that causes drainage of surface water to injure or damage other property in the Park.
- d) **Construction Maintenance:**
During construction it shall be the responsibility of each owner to insure the building sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner.
- e) **Outdoor Display of Equipment or Products:**
Outdoor display of new or used equipment or products will be permitted.
- f) **Outdoor Refuse Collection:**
All outdoor refuse collection areas shall be visually screened from streets and adjacent property by an opaque screen. The screen shall extend two (2) feet above the highest point of refuse collection.
- g) **No Nuisance to Adjacent Site:**
No portion of the property shall be used in such a manner as to create a nuisance to adjacent building sites. Nuisances shall include, but not be limited to, vibration, sound, electro-mechanical disturbances, radiation, air, water or light pollution, and emission of toxic, noxious or odorous matter. Outside storage of materials, equipment and products of the principal use and any accessory to the principal use shall be permitted if screened from view by a fence or other barrier to be approved by the City. See Article IV, Section C, Sub-paragraph 2.

ARTICLE VI. OFF-STREET PARKING AND LOADING

On-street parking, loading and unloading is prohibited. All parking must be contained in parking areas specifically designed and maintained for that purpose. Parking areas shall be set back a minimum distance of ten (10) feet from all property lines. All parking and driveway areas shall be paved. Set-back areas shall be landscaped with trees, ground cover, and shrubbery with due consideration being given to providing adequate site clearance at intersections and access points. Screening of parking areas by use of landscaped berms is strongly encouraged.

Parking areas and criteria shall be as follows:

a) **Spaces Required:**

Adequate off-street parking shall be provided by the owner for customers and employees consisting of no less than one (1) parking space for each employee working on the shift of greatest employment, plus one (1) space for each company-owned (or leased) vehicle, and one (1) truck space for each 7,500 square feet of gross floor area of the main building.

b) **Loading Space:**

Off-street loading space shall be provided and such space shall not be part of the area allocated for off-street parking space.

c) **Location of Loading/Unloading Areas:**

Truck loading and receiving areas shall not be on the front side of the building, except that the City reserves the right to review and permit such necessary areas in the front of the building for loading, unloading and receiving, when the facilities are so screened as not to be visible from the public street in front of the building. Trucks may enter the building from the front.

ARTICLE VII. ADVERTISING SPACE

The City recognizes that there is the need for signs advertising the name of the company located on the land subject to these standards. It is further recognized that acceptable Criteria Standards for such signs may from time to time change so as to alter acceptable requirements for such signs. In order to allow for such changes, all requests for signs to be located on any building site on the land subject to these standards shall be submitted for approval of the City. In the event that the City does not approve any such sign proposals within forty-five (45) days after receipt, said sign proposals shall be deemed to have been approved by the City, provided, however, that no sign located on the land subject hereto shall:

- a) Be an advertising sign, advertising businesses, or products other than those sold, manufactured or warehoused on the premises on which the sign is located, except that this provision shall not apply to any development or directional signs erected by the City.

- b) Be permitted to have in use any flashing, pulsating, or rotating light or lights.
- c) Be a sign located on a roof-top.

ARTICLE VIII. POTENTIAL FUTURE LIABILITIES

a) Fire Hydrants:

In the event that the Fire Chief or Fire Department of the City of Moorhead determines that a particular building site requires additional fire hydrants and water mains appurtenant thereto, the landowner or tenant agrees to have such hydrant and mains installed at his expense.

b) Lighting Expenses:

Landowners or tenants agree to waive their right to protest to, and agree to pay their proportionate share of street lighting expense or of a Special Improvement District or Special Lighting District assessment for street lighting within the Park, if any.

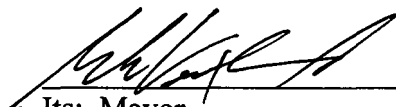
c) Landscape Maintenance:

Landowner agrees to pay his/her proportionate share of the maintenance costs for the median strips and the boulevard or street entrance, and for the common landscaping around Park entry ways. Said proportionate share shall be calculated by assessing the landowner that fraction of the total maintenance cost which the landowner's land area is to the land area of the park, together with any future additions to the Park, exclusive of streets, railroad right-of-way, and any street, railroad or public right-of-way as may be shown on the plat of any future addition.

d) Railroad Lead Track Expenses and Maintenance where applicable. See Exhibit "B."

IN TESTIMONY WHEREOF, the said City of Moorhead has caused the above-mentioned Standards and Covenants to be executed this 23rd day of November, 2010.

CITY OF MOORHEAD

BY: 
 Its: Mayor

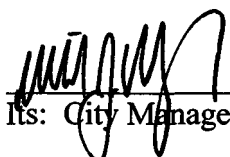
BY: 
 Its: City Manager

EXHIBIT B

DEFINITIONS

“Lead track” means the railroad track running from the main line of the railroad right-of-way which serves the lots in the Park adjacent to said track.

“Spur track” means the railroad track which runs from the Lead Track to individual lots in the Park which are adjacent to the Lead Track.

“Spur track switch” means the switching mechanism necessary to divert railroad cars from the Lead Track to the Spur Track and back to the Lead Track from the Spur Track.

“User” means the Owner or tenant of an Owner of property adjacent to the Lead Track who actually uses the Lead Track for rail service. For purposes of this restrictive covenant, actual use for any given calendar year will be deemed to have occurred upon receiving or shipping any product, material good, commodity or equipment by means of the Lead Track at any time during such calendar year and such use shall constitute the benefiting party a “User.”

STANDARDS AND COVENANTS

Each User located adjacent to the Lead Track shall pay a proportionate share of the costs of maintenance, upkeep, snow removal, and all other necessary repairs of the Lead Track one a calendar year. These costs may be assessed against each users property by special assessment.

Each User shall be responsible for and pay for all installation and maintenance and repairs of all Spur Tracks and Spur Track switches which serve its respective property. These costs may be assessed against each users property by special assessment.

Before constructing Spur Track each User shall first procure without expense to Railroad or Authority all necessary right-of-way and all necessary public authority and permission for the construction, maintenance and operation of the Spur Track.

Each User shall construct, maintain and operate the Spur track subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Railroad or Authority rather than to Landowner or Tenants and assumes any and all liability for and shall indemnify, defend and save harmless Railroad and Authority from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of non-compliance with or violation of the provisions of such public authority or permission by or through the sole or joint negligence or other actionable fault of the User.

If separation of the grade of said Spur track and of any highway or street is ordered by public authority, the User shall indemnify Railroad and/or Authority against any expense in connection therewith or consent to the removal of the Spur track.

Each User, at its own expense, will perform or will arrange for all grading and provide necessary drainage for that portion of Spur track which is located off Railroad property. Grading and drainage work on Railroad property will be performed by User at each User's expense.

Each User shall bear and pay any costs for changes or alterations in that portion of track owned by User or Authority that may be necessary in order to conform to any changes of grade or relocation of the tracks of Railroad at the point of connection with said track required by any law, ordinance or regulation, or necessary because of any other reason beyond Railroad's control. These costs may be assessed against each users property by special assessment.

Any work performed by a User in constructing or maintaining any Spur track or any facilities extending over, under or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Railroad's standards. Wire lines shall be constructed and maintained in accordance with Railroad's requirements, the National Electric Safety Code and any statute, order, rule or regulation of any public authority having jurisdiction. If a User fails to maintain said facilities or that portion of the Spur track herein agreed by it to be maintained or to pay the bills therefore or for the common maintenance of the Lead track within the prescribed time, Authority may request Railroad to refuse to operate over the User's said Spur track.

If the Lead track of the Spur track is used for the receiving, forwarding or storing of hazardous commodities, the User shall comply with Railroad's requirements and the requirements of any statute, order, rule or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

"Cost" for the purpose of this covenant shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

Landowner or Tenant shall not place, or permit to be placed, or to be placed, or to remain, any material, structure, pole or other obstruction within 8½ feet laterally of the center or within 23 feet vertically from the top of the rail of the Lead Track or any Spur Track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for herein, then Landowner or Tenant shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this covenant.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Landowner or Tenant shall strictly comply with the terms of any such order and indemnify and hold harmless Authority from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Railroad's operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of Landowner or Tenant contained herein or of Authority's right to recover for such damages to property or injury to or death of persons that may result therefrom.

User shall indemnify and hold harmless the Authority, its commissioners, agents or employees for loss, damage, injury or death from any act or omission of User, its employees, or agents, to the person or property of any person or corporation while on or near said Lead or Spur tracks.

In the event a User permits a party or parties, hereinafter called "Permittee", other than itself or the Railroad to use said tracks for receiving, forwarding or storing shipments, User shall indemnify and hold harmless Authority, its commissioners, agents, or employees from and against any and all loss, damage, injury or death, resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of any person or corporation while on or near said Lead or Spur tracks.

This covenant shall inure to the benefit of and be binding upon the successors and assigns of all Owners of Property in the Park and of the Authority.

Landowner or Tenant understands and acknowledges that Railroad shall be privileged to discontinue the maintenance and operation of its main track which serves the Lead and Spur tracks located within the Park, and to remove its turnout connection, in the event of any of the following contingencies, viz:

- (a) Authority ceases for a continuous period of one (1) year the doing of business in an active and substantial way at the Park being served by the Railroad.
- (b) Railroad is authorized by competent public authority to abandon its line to which said tracks or connected.
- (c) Authority shall fail to keep and perform any obligation or stipulation stated in or resulting under Authority's agreements with Railroad.

No recourse or claim will exist in favor of or be asserted by Landowner or Tenant because of the discontinuance of operation and removal of any railroad track located within or without the Park.

This covenant is also made for the benefit of such other railroads which, either by prior understanding or agreements with the Railroad have the right to use the Lead track, or which shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

In the event Authority shall request Railroad to assume ownership and maintenance responsibility of Lead track between the point of clearance on the Lead track from the main line and the end of the Lead track and if Railroad will be agreeable to assuming said ownership and maintenance then all Users owning a private switch and Spur track will upgrade said privately owned switch and track from the headblock on the Lead track to the clearance point or the end of the easement which may be given by Authority to Railroad, whichever is more, pursuant to Railroad specifications, and said Users will be required to transfer title to any such privately owned and upgraded switch and track to Railroad upon the decision of such Authority to convert ownership of said tracks to Railroad.

EXHIBIT A

Whereas, the Authority is desirous of subjecting said properties as described as follows to the conditions, covenants, restrictions, and reservations set forth within the Declaration of Industrial Standards and Protective Covenants for McCara Third Addition:

- a. Lots 1, 2, and 3 of Block 1, Lots 1 and 2 of Block 2 and Outlots A and B of McCara Third Addition to the City of Moorhead.