

**STATEMENT TO CONDITIONS, COVENANTS, RESTRICTIONS  
AND RESERVATIONS AND EASEMENTS AFFECTING  
I-94 BUSINESS/INDUSTRIAL PARK  
JAMESTOWN, NORTH DAKOTA**

X166692

This declaration is made this 15<sup>th</sup> day of September, 2004 by **JAMESTOWN/STUTSMAN DEVELOPMENT CORPORATION**, a corporation organized and existing under the laws of the State of North Dakota, with principal offices at 210 10<sup>th</sup> Street SE, Jamestown, North Dakota, hereinafter referred to as the "Corporation", and others hereinafter delineated by execution, as *Grantors*,

WITNESSETH:

WHEREAS: The Corporation is the owner of the real property described as:

A tract of land approximately 47 Acres located in: The South West Quarter (SW 1/4) of Section One (1), Township One Hundred Thirty Nine North (T139N), Range Sixty-Four West (R64W) of the Fifth Principal Meridian, Stutsman County, North Dakota

Block 1, Lots 1-8, Block 2, Lots 1-3, Block 3, Lots 1-5, Block 4, Lots 1-8. All lots in I-94 Business Park Addition to the City of Jamestown, North Dakota.

and is desirous of subjecting said property to the conditions, covenants, restrictions and easements hereinafter set forth each and all of which is and are for the benefit of said property and each and every owner thereof and shall inure to the benefit of and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest and any other thereof; now,

THEREFORE, the Corporation hereby declares that the real property here and before described is and shall be held, transferred, sold, conveyed, and occupied subject to the conditions, covenants, restrictions, reservations, and easements set forth hereinafter.

**ARTICLE I  
DEFINITION OF TERMS**

- A. "Building Site" shall mean any lot, or portion thereof, or two or more contiguous lots or portions thereof, or a parcel of land which a commercial, manufacturing, or industrial building or buildings and appurtenant structures including landscaping may be erected in conformance with requirements of these covenants.
- B. "Grantor" shall mean the Corporation, its successors and assigns unless the context shall otherwise indicate.
- C. "Improvements" shall mean and include a commercial, manufacturing or industrial building or buildings, outbuildings appurtenant thereto, parking areas, loading areas, driveway, fences, masonry walls, hedges, lawns, mass plantings and any structures of any type or kind located above ground.

- D. “Building Line Setback” shall mean the minimum distance which commercial, manufacturing, or industrial buildings and outbuildings or any structures of any type or kind located above ground shall be set back from the property line or lines abutting any street(s).
- E. “Minimum Building Site Elevation” shall mean that all drainage shall flow into the street storm sewer system.
- F. “Noxious” shall mean harmful to the health, injurious.
- G. “Offensive” shall mean unpleasant, as to the senses, disgusting, repugnant (an offensive odor).

PROPERTY SUBJECT TO THIS DECLARATION

- H. The real property which is and shall be conveyed, transferred, occupied, and sold subject to the conditions, covenants, restrictions, reservations, and easements is located in Stutsman County, North Dakota, and is legally described as:

A tract of land approximately 47 Acres located in: The South West Quarter (SW 1/4) of Section One (1), Township One Hundred Thirty Nine North (T139N), Range Sixty-Four West (R64W) of the Fifth Principal Meridian, Stutsman County, North Dakota. This includes Block 1, Lots 1-8, Block 2, Lots 1-3, Block 3, Lots 1-5, and block 4, Lots 1-8. or any portion thereof. All lots in I-94 Business Park Addition to the City of Jamestown, North Dakota.

- I. “Site Committee” shall mean a committee of **five (5) members** appointed by the Corporation. Once the Corporation appoints a Site Committee that contains no members of the Corporation Board or staff, the Site Committee shall thereafter be an independent body establishing its own rules of governance.

ARTICLE II

GENERAL PURPOSES OF CONDITIONS

- A. The real property described in Article I hereof is subjected to the conditions, covenants, restrictions, reservations, and easements hereby declared to insure proper use and appropriate development and improvements of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereof structures built of improper or unsuitable materials; to insure adequate and reasonable development of said property; to encourage the erection of attractive improvements thereon, with appropriate locations thereon on building sites; to prevent haphazard and inharmonious improvements of building sites; to secure and maintain proper setbacks from streets, and adequate free space between structures; and in general to provide adequately for a high type and quality of improvement in said property.

B. Without otherwise limiting the provisions of Paragraph A of this Article III, or any of the other terms and conditions of these restrictions, the buildings or premises, except as otherwise provided in these restrictive covenants, may be used as permitted under the zoning Ordinances of the City of Jamestown, including but not necessarily limited to the following:

1. Appliance, automotive, manufacturing and wholesale sales.
2. Bottling, cold storage, ice or locker plants.
3. Contractor's offices, shops, and storage. (*See Outside Storage req.*)
4. Dry cleaning and laundry plants
5. Electronic equipment manufacture and wholesale.
6. Farm equipment manufacturing.
7. Food and kindred product processing.
8. Furniture, lumber and wood manufacturing and wholesale.
9. Iron and steel works (*note exception for scrapyards*).
10. Plumbing, heating, air conditioning manufacture and service.
11. Metal processing and fabricating.
12. Printing and publishing plants
13. Public works and public utility facilities, including, but not limited to, transformer stations, pumping stations, water towers, and telephone exchanges.
14. Stone, marble and glass operations.
15. Textile and clothing manufacturing.
16. Transportation terminals and freight yards.
17. Utility offices, installations and shops.

ARTICLE III  
GENERAL RESTRICTIONS

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- A. No noxious or offensive trade or activity shall be carried on, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Industrial Site hereby restricted, whether said annoyance or nuisance be by reason of unsightliness or the excessive emission of odors, dust, fumes, smoke, or noise, or by reason of excessive vibration, glare, and heat, fire hazards, or industrial waste, in accordance with the regulations as promulgated by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the North Dakota Department of Environment and Natural Resources.
- B. Without otherwise limiting the provisions of Paragraph A of this Article III, or any of the other terms and conditions of these restrictions, the buildings or premises, except as otherwise provided in these restrictive covenants, may be used as permitted under the zoning Ordinances of the City of Jamestown, except that the following uses shall not be permitted:
1. Auto wrecking or salvage yards.
  2. Used material yards, storage or baling of waste or scrap paper, rags, scrap metals, bottles or junk, except as they may become necessary as in incident of a permissible use of the premises.
  3. Residential uses, provided, however, that quarters may be maintained for watchmen, guards, or similar personnel.
  4. Asphalt plant, packing or slaughtering yards.
  5. No portion of any of the premises, including the curb area adjacent to road, may be used to aid or assist any business or employee group, including unions, in work stoppage, strikes or other employer-employee condition, without securing permission of the adjacent landowners where such activity may be conducted.
  6. No outdoor fires or burning barrels of scrap or garbage. Exception may be outdoor cookouts for picnics or business functions.

C. Setback distances shall be as follows:

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1. Street building line setback distances:

- (a) The front yard shall be a minimum of fifty (50) feet, utilized exclusively for landscaping, except for approved fences, walls and access and egress drives to parking area. *(Exception on Lot 3 of Block 2 & Lots 4 & 5 of Block 3 because of irregular size)*

2. Side and rear building line setback distances:

- (a) The side yard and the rear yard requirements shall be a minimum of fifteen (15) feet. If a corner lot is utilized, then side yard setback shall be fifty (50) feet.
- (b) No building or structure above ground shall extend beyond the building lines prescribed above and it is hereby declared that the yards or areas created by the observance of the building of setback lines established above may be used or developed either for attractive open landscape and green areas for off-street, paved parking areas. All landscaping shall be properly maintained in a sightly and well-kept condition. Parking areas shall likewise be maintained in a well-kept condition.

D. Approval of Plans

1. Before commencing the construction or alteration (excluding interior alterations) of any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on any tract or lot, the property owner shall first submit site plans and plans and specifications therefore to the Site Committee of the Jamestown/Stutsman Development Corporation for its prior written approval, which approval the Site Committee agrees shall not be unreasonably withheld; provided, however, that the building or other structures or improvements shown thereon are harmonious in design and construction with the then existing buildings, structures and improvements in the Development.
2. Submitted plans must include a site plan, drainage plan, landscaping plan, all floor plans, exterior elevations, at least one cross-section showing the nature of the construction and materials and a description of any intended outside storage.

3. Submitted specifications must contain sufficient data to indicate all materials and finishes for all foundations, exterior walls and roof of buildings and for all outside storage, fencing and walls.
  4. When reviewing the plans and specifications, the Site Committee will utilize the following guidelines:
    - (a) On buildings whose walls are metal paneled, the use of masonry, brick, stone, or block for architectural relief will be installed on the main street side, with a minimum height of four (4) feet above finished grade.
    - (b) Signs, when approved for use, shall not extend vertically above the roof level of the building.
    - (c) In the event that the Site Committee shall fail to approve or disapprove site plans or plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, such approval shall not be required and this Paragraph (c) shall be deemed to have been complied with.
  5. Neither Grantor nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner or lessee of land affected by this Declaration, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans for approval hereunder agrees, by submission of such plans, and every owner or lessee of any of said property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Grantor to recover any such damages.
- E. Excavation - No excavation shall be made except in connection with construction or improvements; and upon completion thereof exposed openings shall be backfilled and compacted, and disturbed ground shall be graded and leveled.
- F. Site and Parking Lot Landscaping
1. Improved building sites shall be landscaped in accordance with the landscape plan submitted to and approved by the Grantor, and no tenant or owner shall occupy the building or structure until such plan, together with adequate provisions for implementing the same, has been so approved. Approved landscape plan shall be installed and completed within sixty (60) days of occupancy or completion of the building, whichever occurs first. If the time occurs during the winter months, then landscaping shall be completed by June 15th. The use of native trees, shrubs and grasses are

encouraged by the Grantor. Owners are encouraged to provide grouping of conifers/evergreen trees on the north and west sides of their parcels to provide wind protection and screening.

2. Maintenance of all land, paved, landscaped, loading and refuse areas, building, structures and all other areas is the responsibility and obligation of each owner at the owners sole cost and expense. No trash, debris, litter or other objectionable materials shall be permitted on any building site, lot or parcel. It shall be the responsibility of the owner to conduct its business in a manner which will not result in such material being generated on its or other building site, lot or parcel. Vegetation maintenance shall be conducted according to City Ordinances.
  3. All land areas between building walls and the site's property lines as well as all adjoining street right-of-ways (the area between the property line adjoining any street and the street curb line) that are not paved, shall be landscaped or vegetated with ground cover in accordance with approved landscape plan by Grantor.
  4. Each site shall have a minimum of ten (10) trees per acre.
  5. Trees located in the interior of the parking lots shall be planted in tree pits/islands with a curb. Tree pits/islands shall have a minimum width of six (6) feet and a minimum length of ten (10) feet. Trees planted in tree pits/islands shall have a maximum density of one (1) tree per thirty (30) square feet. Tree pits/islands shall have a good quality sandy loam soil to a minimum depth of four (4) feet to promote the growth and survival of trees. Conifers/evergreen trees shall not be planted in parking area interiors.
- G. Storage and Refuse Areas - Open storage of materials may not be installed in street building line setback areas. Open storage material, equipment, and trash container products and above ground storage tanks are prohibited except in screened storage yards, of not less than six (6) feet high, but no less than the highest point of screened items. Material within such storage space and facilities must be permitted by EPA, OSHA, and the North Dakota Department of Environment and Natural Resources. Material for storage not meeting those

requirements or having the approval of those agencies shall not be permitted and, in the event of violation, removal action may be sought in the Circuit Courts of the State of North Dakota seeking authority to remove injunction from further storage and the costs and expenses of securing such judicial relief, including attorney's fees.

- H. Parking and Loading Areas - The owner or user of any building site or lot shall provide one (1) paved parking space for each 500 square feet of floor space. The parking area shall be paved and located upon the owner's or user's lot or building site. It is contemplated that a parking requirement shall be calculated on a maximum plant population for the principal shift operation within the working day. Similar off-street parking space for visitors shall also be furnished upon said property. There will be no on-street parking.
- I. It is contemplated that truck loading docks may be installed at each building in such location and in such quantity to permit trucks to load and unload or to wait to do so without hindering traffic upon any public way.
- J. Loading docks generally will not be approved on a street frontage. When approved by Grantor, they shall be generously set back and screened by landscaping or other means, when possible, to minimize the visual effect from the street.
- K. No curb cut or entrance shall be started within twenty-five (25) feet of the property line. The radii of curb cuts shall not be less than twenty-five (25) feet, following existing City Ordinances..
- L. Signs - Except for billboards constructed and maintained pursuant to leases entered into by the City of Jamestown with Newman Signs, Inc. relative to signs authorized by said leases, no billboards or advertising signs other than those identifying the name, business and product of the person or firm occupying the premises shall be permitted. In addition to the above, one (1) sign not exceeding 10x10 feet in area advertising the premises for sale or rent, and accessory signs giving directions, for the delivery of goods, parking, etc., may be erected. No flashing or portable signs are allowed. All signs must be permanent with the exception of For Sale or Rent signs.
- M. Each of the conditions, covenants, restrictions, reservations, and easements set forth above shall continue and be binding upon the Corporation, and upon its successors and assigns and upon each of them and all parties and all persons claiming under them for a period of thirty (30) years from the date hereof, and automatically shall be continued thereafter for successive periods of twenty-five (25) years each; provided, however, at any time after date hereof the holders of the fee simple title of more than 75% of the area subjected to these restrictive covenants, exclusive of highways and railroad right-of-way, may release all or

any part of the land so restricted from any one or more of said restrictions, or may alter, amend, modify or revoke any one or more of said restrictions by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the office of the Auditor of Stutsman County, North Dakota. A recordable certificate by an abstractor doing business in Stutsman County, North Dakota, as to the record fee simple titleholders of the property hereby restricted, and a recordable certificate by a registered or certified surveyor or engineer authorized to practice in the State of North Dakota as to the square footage thereof so owned and hereby restricted with regards to compliance with the provisions of this section.

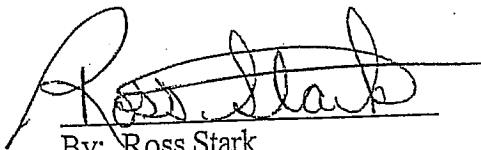
- N. The covenants herein set forth shall run with the land and bind the present owner, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of said building sites, its successors and assigns, and with each of them, or conform to and observe said restrictions as to the use of building sites, and the construction or improvements thereon but no restrictions herein set forth shall be personally binding on any corporation, person, or persons except in respect to breaches committed during its, their or his seisin of, or title to said land, and the Corporation, its successors or assigns, or the owner or owners of any of the above land shall have the right to sue for and obtain an injunction prohibitive or mandatory, or prevent the breach of or to enforce the observance of the restrictions above set forth, in addition to ordinary legal action for damages, and the failure of the Corporation, its successors or assigns, and the titleholder of any lot or lots or building sites hereby restricted to enforce any of the restrictions hereby set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. The violation of these restrictions shall not defeat nor render invalid the lien of any mortgage (or deed of trust) made in good faith and for value.
- O. Invalidation of any one of these covenants or any part thereof by judgments or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- P. The Corporation, its successors and assigns, hereby reserve the right in the sale of lots or building sites, to prescribe and require such additional covenants, conditions, restrictions, reservations and easements as it may deem proper. It is the intention that all of the lots or building sites in the industrial site shall be subject to the conditions, covenants, restrictions, reservations and easements set forth hereinabove, but that they are minimum standards and that at the time of sale of certain specific lots of building sites the same may be subjected to additional conditions, covenants, restrictions, reservations and easements. It is specifically contemplated that in order to achieve the purpose hereinabove indicated, the Corporation, its successors or assigns may, in individual deed or conveyances, impose specific requirements which are not included herein and/or which are more restrictive or stringent in any particular than they may be in this instrument.

- Q. Whenever reference is made in this instrument to lots, it is understood that the same shall be taken to be the lots or parcels as actually sold and conveyed to specific purchasers by the Corporation, its successors or assigns, and that in making reference to a lot or lots in this instrument there is no reference to platted lot or lots. The Corporation contemplates that it shall sell various parcels of ground from the property described herein before in ARTICLE I by means of a metes and bounds or other description and the area so sold and conveyed in any specific transaction shall be considered a lot or building site for the purposes of this instrument. Contiguous lots or parcels conveyed by the Corporation at any time or times, to a particular purchaser and his or its successors shall not be considered as a separate lot or building site for the purposes of this instrument but rather the entire combined area shall be considered as a lot or building site for the purpose of this instrument.
- R. Construction or alteration of all buildings and structures in the industrial site shall meet the standards provided in these restrictions, city building codes and city zoning. Titleholders, prior to construction or alteration of any building, must submit two (2) sets of the plans and specifications for such building to and obtain the written approval of the Site Committee of the Corporation. Written approval of such plan by said Site Committee shall be proof of compliance with these restrictions. Any request for variance for construction, alteration, modification or change from any of these covenants, building codes or ordinances shall require the approval of the City of Jamestown acting through its appropriate board or commission as well as the Executive Committee of the Jamestown/Stutsman Development Corporation.
- S. If, after the expiration of two years from the date of execution and delivery of a warranty deed to, or execution of a real estate contract for sale of, any tract within the industrial site by the Corporation, any titleholders shall not have completed the construction of a building acceptable to the Corporation upon said tract, the Corporation retains the option to refund the purchase price received by the Corporation to the then titleholders and upon payment thereof title to said tract shall immediately revert to and vest in the Corporation, together with all rights of ownership and possession incident thereto. At any time the Corporation, its successors or assigns, may extend in writing the time in which such building may be completed.
- T. An easement is reserved by the Corporation over, under, across and through a strip of ground ten (10) feet in width adjoining the side, front and rear property lines of all tracts in the industrial site sold or conveyed by the Corporation, for the installation, operation, maintenance or removal of utilities; provided, however, when the side, front, or rear property line does not constitute a common boundary with other land in the industrial site, such easement shall be fifteen (15) feet in width.

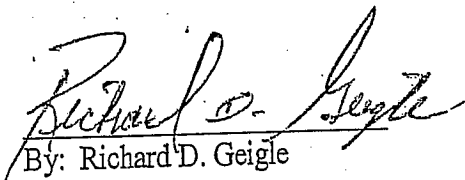
- U. That a lessee under a lease for a term of more than twenty (20) years shall be considered as an owner of said leased premises for the limited purpose of exercising the privileges of ownership with respect to enforcement and modification of these restrictive covenants.
  
- V. No conduct by any owner or tenant in the covered premises shall engage in any activities which shall violate the Environmental Protection Act, the Occupational and Safety and Health Act or any statutes, rules or regulations of the laws of the State of North Dakota and the North Dakota Department of Environment and Natural Resources including, but not limited to, drainage, sewer disposal, exterior disposal, delivery into air, emissions, fumes, burning, trashing, or any other activity constituting a violation of any of the acts of any of the governmental divisions or subdivisions above identified, including the City of Jamestown, a municipal corporation of the State of North Dakota.
  
- W. Notwithstanding any of the above and foregoing, the Site Committee, **by a majority vote of all members**, shall have the absolute authority, upon written request, to grant specific waivers, variances, or modifications to any and all of the condition, restrictions, provisions reservations, easements and covenants contained in this document.
  
- X. The Corporation shall have the absolute authority to appoint and remove members of the Site Committee, with or without cause.

Dated this 1<sup>st</sup> day of September 2004.

JAMESTOWN/STUTSMAN DEVELOPMENT CORPORATION



By: Ross Stark  
Its: President



By: Richard D. Geigle  
Its: Secretary

STATE OF NORTH DAKOTA)

:SS

COUNTY OF STUTSMAN )

On this 1<sup>st</sup> day of September 2004, before me, a notary public in and for said County and State, appeared Ross Stark and Richard D. Geigle, to me known to be the Corporation President and Secretary, respectively, of Jamestown/Stutsman Development Corporation, who acknowledged they signed the within and foregoing instrument, and acknowledged they had authority to do so on behalf of the Corporation

SUSAN M. THORESON  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires JANUARY 25, 2006  
(Seal)

Susan M. Thoreson  
\_\_\_\_\_, Notary Public

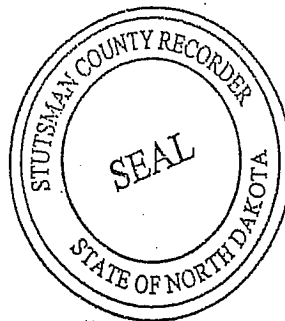
Stutsman County, North Dakota  
My Commission Expires: 01-25-06

X166692

Office of County Recorder  
Stutsman County North Dakota  
I hereby certify that the within instrument  
was filed in this office for record

SEP - 1 2004

at 1:03 o'clock P.M., and was duly recorded  
Karen Samel County Recorder  
By \_\_\_\_\_ Deputy



pd \$ 43.00 ✓  
Jmst/Stutsman Devel. Co  
210 14th ST SE