

## **DECLARATION OF RESTRICTIONS**

**BY THE PORTS OF INDIANA**

**FOR PORT OF INDIANA-MOUNT VERNON**

**MOUNT VERNON, INDIANA**

### **SECTION 1-PROPERTY AND PERSONS AFFECTED**

**1.01** The real Property, which is the subject of these restrictions, is located In Posey County, State of Indiana, adjacent to the City of Mount Vernon, Indiana.

**1.02** All persons and corporations who now lease or shall hereinafter acquire any interest in the aforementioned Property shall be taken to hold and agree and covenant with the Ports of Indiana and with its successors and assigns to conform to and observe the following covenants, conditions and restrictions, as to use of the property and the construction of improvements thereon.

### **SECTION 2-GENERAL PROVISIONS**

**2.01** The Ports of Indiana, owner of the Property, hereby declares that the Property is now held, and shall hereafter be held, leased, and occupied subject to the restrictions herein set forth, each and all or which is and are for, and shall inure to, the benefit of each and every parcel of the Property and shall apply to and bind the assignees and successors in interest of any owner thereof.

**2.02** The purpose of these restrictions is to insure proper development and use of the Property, to protect the owner of each parcel against such improper development and use of surrounding parcels as will depreciate the value of his improvements, to prevent the erection on the Property of structures built of improper design or materials, or encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements, to secure and maintain proper setbacks from streets and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement or the Property in accordance with a general plan.

### **SECTION 3-DEFINITIONS**

**3.01** "Property" shall mean the Port of Indiana-Mount Vernon as shown on the attached plan so titled.

**3.02** "Site" shall mean all contiguous land under one ownership.

**3.03** "Improvements" shall mean and include buildings, outbuildings, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, signs and any structures of any type or kind.

**3.04** "Ports of Indiana" shall mean the undersigned, its successors and assigns, and authorized representatives.

#### **SECTION 4-PRIMARY INTENDED USE**

**4.01** All sites in the Property shall be used for heavy and light industrial manufacturing, warehousing or distribution purposes only and retail sales of merchandise or services shall not be permitted except for the retail sale by an owner or lessee of products manufactured therein. In particular, but not in limitation of the foregoing, no restaurant, motel, gasoline service station will be permitted except at such locations as Ports of Indiana, its successors or assigns, in the exercise of its sole discretion shall first approve in writing.

#### **SECTION 5-PROHIBITED USES**

**5.01** No land or building shall be used or occupied which does not conform to the performance standards of Section 6. In addition, the following uses are specifically prohibited:

- (a) Residential
- (b) Commercial Incineration
- (c) Junk Yards
- (d) Rubbish, Garbage or Trash Dumps
- (e) Outside Storage unless in Conformance with Section 6.06
- (f) Commercial excavation of building or construction materials
- (g) Distillation of bones
- (h) Dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse
- (i) Fat rendering
- (j) Stockyard or slaughter of animals
- (k) Smelting of iron, tin, zinc, or other ores

#### **SECTION 6-REQUIRED CONDITIONS**

**6.01** Any buildings or uses permitted in the Property shall comply with the following conditions:

**6.02 SETBACKS** No building shall be located within 75 feet of any interior or exterior road or street, nor within 25 feet of any property line. No structure of any kind, and no part thereof, shall be placed on any site closer to a property line than herein provided. The following structures and improvements are specifically excluded from these setback provisions:

- (a) Roof overhang, subject to the specific approval of Declarant in writing.
- (b) Steps and walks.
- (c) Paving and associated curbing, except that vehicle parking areas shall not be permitted within ten (10) feet of the street property line or lines.
- (d) Fences, except that no fence shall be placed within the street setback area unless specific approval is given by Ports of Indiana in writing.
- (e) Landscaping.
- (f) Planters, not to exceed three (3) feet in height.
- (g) Railroad spur tracks, switches and bumpers, provided that the location of such tracks, switches and bumpers is specifically approved by Ports of Indiana in writing.
- (h) Gas and service stations including all pertinent uses, subject to the specific approval of Ports of Indiana in writing.
- (i) Displays identifying the owner, lessee or occupant, subject to the specific approval of Ports of Indiana in writing.

**6.03 ACCESSORY BUILDINGS** Accessory buildings shall be located at least 25 feet

from a principal building.

**6.04 MINIMUM LOT** Each lot shall contain not less than 3 acres.

**6.05 MAXIMUM BUILDING COVERAGE** The total floor area of all buildings shall not exceed 1/2 of the total lot area.

**6.06 STORAGE** All materials and equipment shall be stored in completely enclosed buildings or shall otherwise be screened by such walls, fences and landscaping as may be determined by Ports of Indiana to be adequate to appropriately screen such materials and equipment from areas outside of the lot boundaries.

**6.07 LANDSCAPING** Lessee shall landscape that portion of his site between building or buildings and the curb line of abutting streets and shall remove undergrowth, weeds, debris and any other unsightly materials from the remainder of the property at his own expense. Each lessee in the Property shall maintain his landscaping in a safe, clean and attractive condition. Should Ports of Indiana, its successors or assigns, find any lessee negligent in this regard, it may give notice of the fact to the offending party. Within ten days of the receipt thereof, said party shall initiate corrective measures. Effective disregard of notice shall give Ports of Indiana, its successors or assigns, a right to enter the offending premises and undertake necessary maintenance at the expense of the lessee thereof. Failure to reimburse Ports of Indiana, its successors or assigns, for these services within thirty (30) days after billing shall give it legal right to add such charges to the lease charges on the site.

**6.08 TREES** Lessees in the Property shall exert their best efforts to preserve the natural beauty of their respective properties and, in this regard, shall not needlessly destroy or remove live trees, other than those in an area earmarked for construction. No destruction of any plants or wildlife habitation in the areas designated "Greenbelt" shall be permitted except for utility or conveyor access across such greenbelts. Under such circumstances, the lessee shall replace such plant life to the satisfaction of the Ports of Indiana.

**6.09 HEIGHT** Prior to construction or alteration of any structure in the Property, the lessee involved shall file his construction plans with the Airport Ports of Indiana and shall obtain from said Agency approval of or notice of absence of jurisdiction over the contemplated construction.

**6.10 OFF-STREET PARKING**

- (a) No parking or loading shall be permitted on any street or road, either public or private, or at any place other than the paved parking or loading area provided in accordance with the following, and each owner shall be responsible for compliance by its employees and visitors.
- (b) LOCATION: Off-street parking areas shall be located at least 10 feet from a public street and at least 5 feet from a building or property line. However, no more than 50 percent of the required front yard may be used for parking.
- (c) PAVING: All driveways and parking areas shall be constructed with a hard surfaced pavement and shall include adequate drainage facilities to dispose of all storm water.
- (d) Off-street parking areas shall be used for the parking of passenger vehicles or commercial and other vehicles incident to the business conducted on the property. No commercial repair work or any services of any kind shall be conducted on such parking areas.
- (e) LIGHTING: Area lighting shall be arranged so that the direct source of lighting is away from adjacent streets and residential districts.
- (f) Areas utilized from parking must be screened, modulated or interrupted from the view of access streets and adjacent properties. This may be accomplished by

employing one or all of the following techniques, but any single technique, or combination, must not obstruct the vision within twenty (20) feet of an intersecting, street, driveway or roadway:

- i. Lineal Masses of Shrubs - This method requires use of shrubs that will achieve a height from four (4) to six (6) feet within three (3) years. Minimum size of five (5) gallons required.
- ii. Lineal or Grouped Masses of Major Scale Trees - This method requires use of trees that shall ultimately provide foliage that is visible above the roof line from within the total site.
- iii. Lineal or Grouped Masses of Smaller Scale Trees - This method requires use of trees that shall ultimately provide foliage or shade patterns on either horizontal or vertical planes.
- iv. Parking Lot Trees - Trees equal in number to one (1) per each twenty-five (25) parking stalls may be provided in all parking areas. Minimum sizes: not less than 3 inches in diameter measured two (2) feet above the ground.
- v. Berming - This method requires berming to an elevation of not less than four (4) feet or more than six (6) feet on all sides exposed to streets or other properties. Said berm to be planted in grass.

**6.11 LOADING AND UNLOADING** For each industry at least one loading and unloading space shall be provided. Loading and unloading space shall be located in other than the front yard. Loading areas shall not encroach into setback areas unless specifically approved by Ports of Indiana in writing. Loading docks shall be set back and screened to minimize the effect from the street. Docks shall not be closer than seventy-five (75) feet to the street property line, unless specifically approved by Ports of Indiana in writing. Loading will be permitted to the rear of the setback line from that portion of a structure not fronting a street.

**6.12 CONSTRUCTION AND APPEARANCE** All buildings constructed in the Property shall conform to the standards specified by the National Electric Code, the Administrative Building Council of Indiana, and the Uniform Plumbing Code, or their successors or enforced by Posey County, Indiana and to the health and zoning regulations of said Posey County or State of Indiana. No building shall be constructed with wooden frames. All walls shall be of masonry construction or of such other materials as may be considered by the Ports of Indiana, its successors and assigns, to be equal to or better than masonry in strength, fire resistance, durability and appearance. Front walls and one-third of the side-wall nearest the front wall, the side wall to be divided into thirds vertically, shall be finished with face brick, stone, precast concrete, or such other materials, which in the opinion of the Ports of Indiana, its successors or assigns, is equal to or better than these materials in strength, fire resistance, appearance and durability. Buildings considered on corner lots shall be considered to have two fronts. When walls other than front walls, as described above, are constructed of lightweight aggregate or concrete block, unless such walls are finished in stucco, gunite, or equivalent, the joints shall be rubbed down and covered sufficiently with standard waterproofing paint. Exterior walls of sheet or corrugated, iron, steel, aluminum or asbestos will be permitted only upon specific approval in writing by Declarant.

**6.13 UTILITY EASEMENTS** All utility easements as dedicated on the face of the plat shall be kept free of all structures and the removal of any obstruction by a utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original form. Approvals in hardship cases will be considered after written application to the Ports of

Indiana, its successors or assigns, proving no feasible alternative exists.

**SECTION 7 - PERFORMANCE STANDARDS**

**7.01** All of the following minimum standards must be complied with:

- (a) **FIRE AND EXPLOSION HAZARDS:** All activities shall be carried on only in structures which conform to the standards of the National Board of Fire Underwriters concerning the plant operation and storage of explosive raw materials, fuels, liquids and finished products.
- (b) **RADIOACTIVITY:** All activities located within this zone shall comply with Title 10, Chapter 1, Part 20, Code of Federal Regulations, Standard for Protection Against Radiation”.
- (c) **SMOKE, FUMES, GASES, DUST, ODORS:** There shall be no excessive emissive of any smoke, fumes, gas, dust or odors. These and any other atmospheric pollutant, which is detectable to the human senses at the boundaries of the lot occupied by such use is prohibited. In any case, the limit of such emission of air pollutant shall be subject to the approval or acceptance by the Ports of Indiana.
- (d) **VIBRATION:** There shall be no vibration, which is discernible to the human sense of feeling beyond the immediate site on which such use is conducted.
- (e) **NOISE:** There shall be no operational industrial noise measured from any point on the property line of the lot on which the industrial operation is located which shall exceed the values given in the following table in any octave band of frequency. The sound pressure level shall be measured with a Sound Level Analyzer that conforms to specifications published by the “American Standard Sound Level Meters for Measurements of Noise and Other Sounds” Z24.3— 1944, American Standards Association, Inc., New York, New York and “American Standard Specifications for an Octave Band Filter Set for the Analysis of Noise and Other Sounds” Z-24-10-1953, American Standards Association, Inc., New York, New York.

<b>Frequency Band in Cycles per Second</b>	<b>Sound Pressure Level Decibels</b>
0-75	65
75-150	50
150-300	44
300-600	38
600-1200	35
1200-2400	32
2400-4800	29
Above 4800	26

- (f) **LIOUID OR SOLID WASTES:** The discharge of untreated industrial wastes into a stream or open or closed drain is prohibited. All methods of sewage and industrial waste treatment and disposal shall be approved by the Indiana Stream Pollution Control Board. More specifically, all sanitary and process liquid waste must be discharged into the sanitary sewer system. The volume, quality and strength of all liquid waste shall be discharged into the sewer in strict accordance with the regulations of the Sewage Utility of Mt. Vernon, Indiana.
- (g) **SITE DRAINAGE:** No driveways, walks, parking areas, etc., may be constructed

across any drainage ditch, channel or swale without providing adequate culverts or waterway openings for natural drainage. Such culverts, etc., shall provide the minimum waterway opening and shall be at the proper gradient as established in the Property Development Plans as furnished by the Ports of Indiana. No rain and storm water run-off or such drainage as roof water, street pavement and surface water caused by natural precipitation or ground water from footing or foundation drains or other sub-surface water drainage shall at any time be discharged into or permitted to flow into the sanitary sewer system, which shall be a separate sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned storm water, surface and sub-surface sewer system.

### **SECTION 8-SIGNS**

**6.01** Signs are permitted in this district as hereinafter regulated, provided that no sign shall be permitted which is not accessory to the business conducted on the property and then only if the following requirements are complied with:

- (a) Business signs may be erected providing the sum area of all signs does not exceed two (2) square feet per foot of building frontage. The total area of business signs shall not exceed 100 square feet. Such signs shall be attached to the principal building and shall not extend more than five (5) feet above the roof line.
- (b) In addition to building signs, each separate lot may have one freestanding name plate sign which is accessory to the business conducted on the premises. Any freestanding name plate sign as permitted by this section must meet all of the following requirements:
  - i. The height shall not exceed six (6) feet.
  - ii. No freestanding name plate sign shall be nearer than five (5) feet from any abutting street right-of-way or property lines.
  - iii. The area of the sign shall not exceed nine (9) square feet.
  - iv. In the event there is more than one tenant in the business building, each tenant is entitled to one (1) name plate sign attached to the freestanding sign provided. However, each such name plate sign shall be of uniform dimensions and lettering, and no name plate sign shall exceed nine (9) square feet in area.
- (c) No sign shall be lighted by means of flashing or intermittent illumination.
- (d) On a corner lot, within the triangular area formed by the center lines of streets and a line drawn between points on the center lines of each street at distance of ninety (90) feet from the center line of the intersection, there shall be no sign or obstruction of vision in excess of 3 1/2 feet in height above the center lines of the pavements at these points.

### **SECTION 9-SITE PLAN APPROVAL**

**9.01** Prior to construction or alteration of any building or improvement on a building lot, two (2) sets of site plans and specifications for such building or alteration shall be submitted to the Ports of Indiana, or Its nominee, and written approval of such plans by the Ports of Indiana, or its nominee, shall be proof of compliance with these restrictions; provided however, that if the Ports of Indiana fails to approve or disapprove such plans and specifications within thirty (30) days after such plans have been submitted to it, such approval shall not be required. Site plans shall contain the following information:

- (a) The site plans shall be drawn to a scale not greater than one- inch equals fifty (50) feet and shall show the following:
  - i. All lot line dimensions.
  - ii. Building setback, side and rear yard distances.
  - iii. Location of all proposed buildings.
  - iv. Location of off-street parking areas with dimensions showing parking spaces, access drives, traffic circulation and the location and description of any lighting in connection with the parking area. This includes the location and dimensions of all loading and unloading docks and area,
  - v. Location and description of all proposed signs.
  - vi. Type of surface paving and curbing.
  - vii. Storm drainage facilities and means of disposal of storm water.
  - viii. All landscaping, fences, walls, or similar facilities to be provided.
  - ix. The location of all structures within 300 feet of the property.
  - x. The specific types of material to be used In construction.
- (b) If the site plan is rejected by the Ports of Indiana, or its nominee, the applicant shall remedy any and all elements in the plan prior to further consideration.

#### **SECTION 10-RECAPTURE**

**10.01** If, after the expiration of one (1) year from the date of execution of a tease agreement on any part, parcel, tracts or lot within the Property, any purchaser shall not have begun in good faith the construction of any acceptable building upon said part, parcel, tract, tracts or lot, the Ports of Indiana retains the option to refund the initial payments and enter into possession of the land. At any time, the Ports of Indiana, its successors or assigns, may extend in writing the time in which such building may be begun.

#### **SECTION 11-ENFORCEMENT AND INVALIDATION**

**11.01** The Ports of Indiana, its successors or assigns or lessees in the Property may enforce these covenants by injunctive process or may utilize any other available legal remedy in these premises. Invalidation of any of these protective covenants by legal process in no way affects any of the other covenants, which shall remain in full force and effect.

#### **SECTION 12-CONSTRUCTIVE NOTICE AND ACCEPTANCE**

**12.01** Every person who now or hereafter leases or acquires any right or interest in any portion of said property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Restriction is contained in the instrument by which such person acquired an interest in said property.