

COMMERCE CROSSING

Protective Covenants

WHEREAS, the undersigned City of Kaukauna, a Wisconsin Municipal Corporation, hereinafter "City", is the owner of the following described lands collectively known as Commerce Crossing, to wit:

All of Lots 1, 2, 3 and Outlot 1 of Certified Survey Map No. 5680 located in T21N, R18E, City of Kaukauna, Outagamie County, Wisconsin.

NOW, THEREFORE, in consideration of the aforesaid and for the purpose of preserving the value of the property known as Commerce Crossing, the undersigned City of Kaukauna as owner hereby declares and provides that all use of the land above described shall be subject to the following restrictions, covenants and conditions, to wit:

1. Approval of Plans and Specifications/Architectural Review Procedure.

No building or any improvement shall be erected, placed or altered on any building site in Commerce Crossing until plans for such building or improvement (including site plan, drainage plan, landscape plan, building plan, and specifications) have been approved by the Kaukauna Plan Commission (hereinafter called "Commission"). Said Commission shall approve or disapprove plans with respect to conformity with these restrictions and other applicable enactments of the City and with respect to harmony of external design and land use as it affects property within and adjacent to Commerce Crossing.

The Commission shall act upon such building or improvement plans within thirty (30) days of receipt of said plans as evidenced by U.S. Postal mark or stamped date of receipt, whichever comes first and submit in writing its decision to approve, amend, deny with reason, or otherwise act upon said plans. Failure to act within thirty (30) days of receipt of said plans as evidenced by post mark or date of receipt shall constitute a denial of the plans.

An applicant seeking approval of plans and specifications shall submit three (3) complete sets of plans to the Commission in care of the Planning Department, P.O. Box 890, Kaukauna, WI, 54130, as follows:

Site Plan(s) to Scale Showing:

- Grading plan at a contour interval of one foot showing finished grades and existing trees to be retained or removed.
- Storm water drainage and erosion control plans including all proposed water impoundments or methods of collection to a regional storm pond.
- Square footage of building and site, building locations and setbacks, parking layout and setbacks, location of any planned building and/or parking expansion (including temporary parking during construction), sidewalks and entry locations, driveway and access locations, loading docks, and location and manner of exterior storage, waste and recycling containers.

- Landscaping plan including the location, size, quantity, and species of proposed plantings and integration with existing vegetation.
- Location, size, and proposed screening of outside waste/recycling containers.
- Site lighting including height, spacing, design, and illumination characteristics.
- Building/tenant identification/informational signage locations.
- Location of all proposed and existing utilities including sanitary and storm sewers, water, electric, gas, and telephone, along with location of connections, transformers and switch fuse units, meters and boxes.
- Written schedule of improvements including cost estimates, and time frame of improvements.

Building Plans to Scale Showing:

- All exterior elevations, building heights, roof mounted equipment and utility meters (including size, location, and screening) and graphic indications of building materials, textures, and colors.
- Colored rendering reflecting actual proposed colors.
- All exterior signage design.

2. Building Setbacks and Bulk Regulations.

Unless otherwise noted or required by the Commission, building setbacks and bulk regulations shall be governed by the District Regulations for the particular zoning district in which they are located as set forth in Chapter 17 of the Kaukauna Municipal Code.

3. Building Improvements.

Commerce Crossing is intended to be a Class "A" mixed use commercial development. Signage and buildings are expected to be of high quality promoting the individual structure as well as the development as a whole.

All sides of all buildings must be faced entirely with decorative masonry, textured prefabricated concrete, textural non-metallic materials, or other textured surfaces that do not reflect or expose a metallic surface. An exception can be made for decorative metal bands, windows or door treatments or high quality metal paneling of such style as to be compatible with adjoining facilities. Building materials used for facades or siding are approved or denied at the sole discretion of the Commission.

Exceptions can be made for building equipment apparatus such as air handling units and antennas where part of an approved plan. Signs, when attached to a building, shall comply with the height restrictions of that building.

4. Parking.

- All parking lots and entrances shall be paved with either an asphaltic concrete or concrete surface of sufficient design as to accommodate vehicular and truck traffic.

- Driveway aprons located within street right-of-way and entering a public street shall be of concrete and of similar design to that of the existing concrete or proposed concrete street.
- Parking stalls shall be clearly painted with handicap stalls appropriately marked.
- All parking areas shall provide one light of at least twenty-four (24) feet in height per every twenty (20) parking stalls. Exceptions can be provided where it is shown that the parking lot will receive sufficient light to cover 100% of the lot from fewer poles of greater height or from alternate fittings.

5. Sidewalks.

Concrete sidewalks when provided or required within the public street right-of-way shall be maintained by the adjoining property owner.

6. Fences.

Fences are approved only as part of a site plan with the exception of temporary fences used during construction. Approved fences must be of a decorative nature and may not be manufactured of wood slats or panels, contain barbwire, or of a chain link type.

7. Signs and Mailboxes.

All signs and mailboxes must be approved by the Commission prior to placement. Off premise advertising is prohibited.

8. Monument Sign.

The City of Kaukauna shall place a monument sign along State Highway 55 and Evergreen Drive identifying Commerce Crossing and providing limited space for buyers of property engaged in retail or the service industry within Commerce Crossing. Tenants listed on the sign shall enter into a separate lease agreement for the provision of maintenance and electrical fees associated with this monument sign.

9. Greenspace and Open Spaces.

The City of Kaukauna strives to be a "green" community by providing pedestrian friendly access, low electrical rates fueled by renewable energy, solar access, strategically placed trees for heating and cooling, noise and dust barriers, and high quality, low maintenance public infrastructure.

The placement of trees shall be such that canopies or the crown of the tree provides summer shade on buildings or parking lots, without hindering lighting or solar access. Trees and brush shall be encouraged in all green spaces along with low maintenance grasses.

All greenspace and open space shall be identified in the site plan and shall be attractively landscaped and maintained. No owner of property shall remove any plant or tree within seventy-five (75) feet of the navigable stream crossing Commerce Crossing or from within any storm pond except as permitted by the City.

10. Pond and Drainage Maintenance.

The primary function of the ponds in Commerce Crossing is to detain and treat storm water and water run-off. No aerators or fountains will be permitted in the ponds. No vegetation may be removed from the ponds, waterways or easements except as permitted by the City of Kaukauna. No property owner shall alter the grade of any drainage easement or permit or place any materials, debris, plantings (other than grass) or landscaping within said easement. Any debris within the easement shall be promptly removed. The City of Kaukauna or its designee shall have an unqualified right to enter upon any drainage easement, outlet, or storm pond for inspection and to maintain and repair any drainage ways and drainage improvements. The City shall assess all costs associated with storm water management to all property owners based on a parcel's pro rata share of the total impermeable surface that drains to or through the improvements.

Impermeable surface shall include building foot print, parking lots and drives, private walks and other hard surfaced areas. Streets and sidewalks in the public right of way are not included in the pro rata formula and are not further assessed against the adjoining property owners.

11. Expansion of Commerce Crossing.

The Commission, upon approval of the Kaukauna Common Council may from time to time during the term of these Protective Covenants add property to Commerce Crossing with consent of the owners of property being added and encumber or subject those lands added to the terms of these Protective Covenants. Such expansion may only be for lands adjoining the boundaries of Commerce Crossing.

12. Termination of Protective Covenants.

These Protective Covenants shall terminate thirty (30) years after the date these Protective Covenants have been first established. 120 days prior to any termination, the Commission, upon approval of the Kaukauna Common Council may extend these covenants for any number of consecutive five year terms.

13. Assignment of Commission Review for the Protective Covenants.

Upon the conveyance of 100% of the marketable lots, and that structures have been built upon these lots as approved by the Commission, the owners of lots within Commerce Crossing may, by a three-fourths vote of lot owners, with each lot receiving one vote, assign the duties of the Commission to a five member board composed of property owners initially appointed by the Commission. The initial five member board shall, within 120 days, create rules and regulations to govern its practices and procedures as they relate to carrying out the duties of the Commission in relation to these covenants. Such rules and regulations shall be approved by a three-fourths vote of lot owners, with each lot receiving one vote. Failure to obtain said votes in a period of forty-five (45) days after presentation for voting shall void the process and governance shall revert to the original Commission.

14. Governmental Rights Intact.

All pertinent and applicable laws, ordinances, rules and regulations of governmental agencies shall be applicable to the development of Commerce Crossing, including but not limited to ordinances of the City of Kaukauna, such as the zoning code, building code, erosion control, and fire protection ordinances. Nothing in these covenants shall be construed as waiving or releasing any person from compliance with such laws, ordinances, rules and regulations.

15. Effect of Invalidation of Any Provision.

In the event that any provision of these Protective Covenants shall be held to be invalid by any court, the invalidity of such provision shall not affect the remaining provisions of these Protective Covenants, which shall continue in full force and effect to the extent enforceable.

16. Amendment.

The within covenants and restrictions may be modified and amended only upon the recording of an instrument to said effect, duly signed by the ownership of a majority of the then owners of the lots in said subdivision with the approval thereof by the Common Council as evidenced by a resolution duly adopted by at least three-fourths (3/4) favorable vote to all members of the Common Council. In determining a majority of property owners, one (1) vote shall be counted for each owner owning three (3) acres of land or less, and one additional vote for each full three (3) acres with a maximum of ten (10) votes for any one property owner. The unsold lands retained by the City shall be included in such voting.

17. Enforcement.

The enforcement of the covenants and restrictions contained in these Protective Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants, either to restrain violation or to recover damages set liquidated amount of \$200 per day. The costs of enforcement including reasonable attorney's fees shall be paid by the person or persons adjudicated to have violated or attempted to violate these covenants. Such proceedings may be commenced by any owner or owners of lots in said subdivision or the City of Kaukauna.

IN WITNESS WHEREOF, that said City of Kaukauna has caused these presents to be signed by Eugene J. Rosin, its Mayor, and Susan J. Duda, its Clerk/Treasurer, and its corporate seal also to be hereunto affixed this 17th day of July, 2007.

CITY OF KAUKAUNA

By: Eugene J. Rosin
Eugene J. Rosin, Mayor

ATTEST: Susan J. Duda
Susan J. Duda, Clerk/Treasurer

ACKNOWLEDGEMENT

State of Wisconsin
Outagamie County

Personally came before me this 17th day of July, 2007, the above named Eugene J. Rosin, Mayor, and Susan J. Duda, Clerk/Treasurer of the City of Kaukauna, and to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Signed: *[Signature]* Print Name: _____

Notary Public, Outagamie County

My Commission is permanent. (If not, state expiration date): 9/22/2010

Drafted by Paul Van Berkel