

# **PROTECTIVE COVENANTS**

## **ENTERPRISE PARK**

As recorded at the Strafford County Register of Deeds on January 13, 1993 as  
Book 1654, Page 151 - 161

### **DECLARATION OF PROTECTIVE COVENANTS**

**AND PERFORMANCE STANDARDS**

**ENTERPRISE PARK  
Dover, New Hampshire**

KNOW ALL MEN BY THESE PRESENTS

This declaration is made this 10th day of December 1992 by Dover Industrial Development Authority, (hereinafter called DIDA).

**ARTICLE I  
INTRODUCTION**

WHEREAS, DIDA, a New Hampshire corporation, is the owner, or agent of the owner, of certain lands and premises, situated in Strafford County, City of Dover, New Hampshire, and as hereinafter more particularly described in "Exhibit A" attached hereto, as hereinafter referred to as THE PARK and,

WHEREAS, DIDA desires to adopt, prescribe and impose certain protective covenants and standards so as to enhance the property and property value for owners within the Park and to assist property owners smoothly through Dover's land use regulatory process, as well as to provide a uniform plan of development and meeting City goals.

NOW THEREFORE, DIDA does hereby impose on the property the following conditions, covenants, and restrictions (hereinafter collectively called Protective Covenants), which shall be covenants running with the land and shall be binding upon any purchaser, grantee, owner or lessee of any land or building in The Park and their respective heirs, executors, administrators, devisees, successors and assigns.

The term DIDA as used herein, shall mean Dover Industrial Development Authority, or its successors, or any person, partnership, corporation, or other entity to which DIDA may convey all or substantially all of the land described in Exhibit "A" for purposes of continuing the development of said lands and to whom DIDA assigns in writing its rights hereunder. DIDA may at any time and from time to time, by instrument filed for record in the office of the Register of Deeds of Strafford County, New Hampshire, appoint any person, firm or corporation as agent and attorney-in-fact to act and perform any act, function or duty of DIDA hereunder. Except as specifically defined herein, all words used in this document have their customary dictionary definitions. Where differences may occur in definition of a particular word which pertains to development, construction, zoning, platting and/or building permits, the definitions listed in the Zoning Ordinance of the City of Dover, New Hampshire shall apply.

**ARTICLE II  
LAND USE REGULATIONS**

2.1 No use of any portion of The Park shall be permitted which in the opinion of DIDA is offensive or otherwise undesirable by reason of odor, fumes (noxious or toxic), dust, smoke, heat, vibration, illumination or glare, noise, pollution or by product, electrical disturbances, radiation, drainage, excavation or any use which is hazardous by reason of fire or explosion. DIDA shall not be liable to any person or entity as a result of DIDA approving or disapproving any uses within The Park or DIDA's failure to enjoin or prevent any use.

**ARTICLE III**

## ARCHITECTURAL AND AESTHETIC STANDARDS

3.1 Landscaping. It shall be the property owner's responsibility to plan, provide and maintain landscaping on their property and within adjacent public rights-of-way.

3.2 Site Development. All buildings, parking and service areas shall be located on the site in a manner that maximizes the aesthetic quality of the site. Loading docks, storage and service areas shall be in the rear of the buildings when possible. Natural vegetation and grade changes shall be used when possible to further minimize and visibility of loading docks, storage and service areas. Constructed screening or landscaped screening may be used when natural screening is not practical. Parking areas shall not consist of large expanses of pavement, but rather be decentralized into smaller areas with attractive landscaping. Parking areas shall be at least partially screened.

3.3 Exterior Construction. All buildings shall contain a main entrance clearly identified by design features, materials and placement. The architectural design and the use of multiple building materials shall be used to create and maintain an aesthetically pleasing facility. The use of unaltered stock designs from building manufacturers is strongly discouraged. The involvement of an architect on the planning/design team is strongly encouraged.

3.4 Sign Restrictions.

A. No sign shall be erected or maintained on the property except in conformity with the City of Dover sign Ordinance and the following, which ever is the more restrictive:

(1) Each building may erect one identification sign not to exceed thirty-two (32) square feet in size and six (6) feet in height if located fifty (50) or less feet from the right-of-way of fifty (50) square feet in size and eight (8) feet in height if located more than fifty (50) feet from a right-of-way. This sign may be free-standing or wall mounted, but not projecting.

right-of-way may erect one identification sign to be viewed from this right-of-way not to exceed one hundred (100) square feet in size and ten (10) feet in height. This sign may be free-standing or wall mounted, but not projecting.

(3) In addition, for multi-tenant buildings, there may be one accessory wall sign identifying each tenant, not to exceed ten (10) square feet in size at that tenant's entry.

(4) Temporary construction signs identifying the architect, owner, contractor or others shall not exceed thirty-two (32) square feet on any face and eight (8) feet in height.

(5) DIDA's signs advertising The Park shall be permitted.

B. The name of The Park may not be used in the name of any building or project on the property or in the name of the owner of any portion of the property in its advertising or other dealings with the public without the prior written consent of DIDA.

3.5 Accessory Outdoor Storage. No materials, supplies, or equipment, including any trucks or trailers and garbage and refuse containers, shall be stored or parked in any area on the property other than areas which are screened from view from the streets by the buildings, grade changes, screens or fences.

3.6 Fences and Walls. Fences enclosing portions of the property shall be permitted. Landscape materials may be required to conceal such fencing. Perimeter fencing shall not be allowed.

3.7 Exterior Illumination. Illumination will be permitted on exterior walls facing streets, and for all parking areas, walkways and between buildings provided there is no unreasonable overlapping of light onto other property or disturbing glares.

3.8 Utilities. All "on-site" electrical lines and connections, CTV and telephone lines and/or other utilities located within any lot shall be placed underground unless otherwise approved in writing by DIDA. Transformers and terminal equipment shall be visually screened from public streets.

**ARTICLE IV  
APPROVAL OF PLANS AND CONSTRUCTION OF IMPROVEMENTS**

4.1 Architectural Review and Approval. All construction and development in The Park, including parking areas, landscaping and signs, as well as any exterior changes to same, shall be submitted in to and approved by DIDA. The proposals shall include building elevations and other appropriate graphics to allow a full understanding of the proposal. DIDA shall advise in writing the party submitting the plans and specifications of (1) the approval thereof, (2) additional information required or (3) the segments or features which are deemed by DIDA to be inconsistent with or not in conformity with these Protective Covenants. In the event DIDA does not, within thirty (30) days after receipt of plans and specifications, give written notice of the disapproval, information needed or objection to features thereof, the approval of DIDA shall be deemed to be given. All improvements within The Park shall be constructed in accordance with plans and specifications as the same may have been finally approved by DIDA. DIDA shall not, however, under any circumstances in connection with its approval or disapproval of drawings and specifications, including without limitation, any liability based on soundness of construction, adequacy of drawings and specifications or otherwise.

**ARTICLE V  
MAINTENANCE**

5.1 Maintenance of Privately Owned Areas.

A. The owners or lessees, jointly and severally, of lots or tracts within The Park shall have the duty of and responsibility for keeping that portion of property, including the buildings, appurtenances, and landscaping owned or occupied in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but not be limited to, the following:

- (1) Prompt removal of all litter, trash, and waste;
- (2) Lawn moving, tree and plant trimming and pruning;
- (3) Watering of all lawns and garden areas and keeping the same alive and free of weeds;
- (4) Maintaining the exterior lighting and mechanical facilities in good working order;
- (5) Maintaining the parking areas, walks, driveways, and roads clean, appropriately marked and in good repair;
- (6) The repainting of all painted improvements so all such painting is maintained in a neat fashion;
- (7) Repairing of all exterior damage to any building, sign or other improvements from any cause whatsoever;
- (8) Maintenance of drainage canals, easements and rights-of-way, if any, which are adjacent to the owner or occupied lots or tracts. Maintenance is not intended to mean the construction or reconstruction of public roadways.

B. Enforcement. If, in the opinion of DIDA, any such owner or lessee fails to properly maintain any portion of The Park for which it is responsible, DIDA may give Owner or Lessee, or both, notice of such fact; and such Owner and/or Lessee within (10) days of such notice, undertake the care and maintenance required to said Owner's or Lessee's property to a safe, clean and attractive condition. Should any such Owner and Lessee fail to fulfill this duty and responsibility after such notice, then DIDA shall have the right and power to perform such care and maintenance, and Owner or Lessee (and both of them) of the property on which such work is performed by DIDA shall be liable for the cost of any such work and shall promptly reimburse DIDA for the cost thereof. If such Owner or Lessee shall fail to so reimburse DIDA within thirty (30) days after being billed therefore by DIDA then said cost shall be a debt of such Owner or Lessee (and both of them), payable to DIDA and shall be secured by a lien against any such Owner's and Lessee's property. Such lien shall be subordinate and inferior to all liens securing amounts due or become due under any first lien mortgage (vendor's lien and/or deed of trust lien) held by a bonafide financial institution (i.e. state or federal bank or life insurance company) affecting the lot or tract subject to such charge which first lien mortgage has been filed for record in Strafford County, New Hampshire, prior to the date the charge of DIDA for maintenance or repairs becomes due and payable. Any foreclosure by the holder of such first mortgage liens, whether by power or sale as set out in the deed or trust or other security instruments, or through court proceedings, shall cut off and extinguish the liens in favor of DIDA securing charges which had become due and payable to DIDA prior to such foreclosure date, provided however, that such foreclosure shall not remove or free any property from liens securing charges thereafter becoming due and payable under this paragraph nor shall the personal obligation to DIDA of any property Owner or Lessee foreclosed upon be extinguished by any foreclosure.

C. DIDA may, upon the breach of these covenant by an owner or Lessee of Owner, without being liable for trespass or other prosecution, or for any claim for damages, enter upon the property and do whatever the Owner or Lessee is obligated to do and the Owner and/or tenant, jointly and severally, agree to reimburse DIDA on demand for any expenses which DIDA may incur in effecting compliance of the Owner's or Lessee's obligations under these Protective Covenants. The Owner, and all Lessees of Owner, further agree that DIDA shall not be liable for any damages resulting to Owner or Lessees of the property arising from such action, whether caused by negligence of DIDA or otherwise.

D. DIDA may, at anytime, assign the enforcement powers of the preceding section to the Property Owners Association within The Park or another group of property owners which includes The Park by executing and recording in the Strafford County Real Property Records an assignment of the enforcement powers.

5.2 Maintenance of Common Areas. DIDA may, at its option, maintain all of the common areas of the property including, for example all or portions of private roads, sidewalks, lighting, medians, parkways, wetlands, drainage, facilities, entrance and directional signs, and the costs thereof (excluding any costs of the initial construction of such subdivision improvements) shall be assesses to the Owner of portions of the property as set out below, and which assessments shall be secured by a lien upon the Property of each Owner, on the dame terms as the liens set out in Sections 5.1B of the Protective Covenants.

A. "Common Areas" and /or "common facilities" as used in this Section 5.2 and elsewhere in the covenants shall mean and include common wetland areas, general identification and directional signs for The Park, landscaped areas and walkways on

common land and other facilities and land in or adjacent to The Park, as  
designate by DIDA from time to time.

B. DIDA shall maintain these common areas and facilities, including but not limited to, the prompt removal of all litter, trash and waste; mowing, tress and plant watering, fertilization, replacement, trimming and pruning; maintenance of drainage facilities and general signs of The Park; and the providing of such general security service as DIDA deems appropriate.

C. All costs of the common area maintenance and improvement, to enhance and beautify common areas and all other such similar expenses incurred by DIDA in its discretion, in good faith to maintain and beautify the common areas and carryout these Protective Covenants, shall be assessed to and shared by the owners as set out below.

(1) The common maintenance expenses shall be allocated between Owners of the Project in proportion to the land area owned by each Owner to the total buildable land area. DIDA shall pay the assessment for that area of the project, subject to the assessment, owned by DIDA. The total land area may be increased by the addition of other land within The Park by imposing similar maintenance obligations upon the additional land.

(2) DIDA shall first calculate the total buildable land area. Buildable land area excludes roads, streets and wetlands. Cross-country utility easements are included in the buildable land area. DIDA shall then estimate the annual expense for the maintenance of the common areas/facilities, and the Owners of property within The Park, and subject to these restrictions, shall remit one-twelfth (1/12) the amount of such estimate to DIDA monthly. On or before January 30 of each calendar year, DIDA shall provide each of the Owners with an itemized accounting of all common expenses incurred including a five (5%) administrative charge by DIDA, within the preceding 12 month period (from January 1 through December 31). Based upon said accounting, the Owners shall remit to DIDA the difference between the expenses allocated to said Owner's property and the sums actually paid for the preceding year, or the Owner shall be entitled to a credit against next succeeding monthly assessments for the amount of any surplus which may have been collected by DIDA. DIDA may increase or decrease the estimate of the annual maintenance charge at any time. The books and records of DIDA for the maintenance of the common areas shall be open to each Owner's inspection at reasonable business hours at DIDA's office of 48 hours written notice.

D. If any Owner, or Lessee of such Owner shall fail to pay DIDA either the monthly assessment of the year-end adjustment, then the sums due DIDA shall be a debt of such Owner or Lessee (and both of them), payable to DIDA and shall be secured by a lien against any such Owner's or Lessee's property upon the same terms as the lien described in Article 5.1B of the Protective Covenants.

E. Notwithstanding any obligations undertaken by DIDA to maintain the common areas and facilities, it shall be the obligation of the Owner of the property, of which a drained area is a part, to maintain the portion of the drainage easement owned by the individual Owner.

F. Notwithstanding any obligations which may be assumed hereby, DIDA shall not be responsible for any damage, destruction, or deterioration of the common areas and facilities which is caused by the negligence of a land Owner or by causes beyond the control of DIDA.

**ARTICLE VI  
AMENDMENT AND ALTERATION OF COVENANTS**

6.1 DIDA's Right to Alter Covenants. DIDA hereby expressly reserves the right and privilege to alter, change or amend any and all of the above mentioned covenants, standards, conditions or requirements at any time during their existence, except DIDA shall approve any such alteration, change or amendment at a regular board by a 2/3 vote of the full board. Any alterations, modification or change in the restrictions by DIDA shall not affect any existing use of any part of the Property and shall be effective only as to lots then owned by DIDA and subsequent improvements and used thereon.

6.2 Additions to the Property Subject to DIDA. DIDA may add additional property to The Park at any time by filing a record of Supplemental Declaration which will extend the scheme of the covenants and this declaration to such property, provided, however, such covenants and restrictions as applied to the property which is so added may be altered or modified by the Supplemental Declaration. Each such Supplemental Declaration shall include a geographical description of the property, and shall contain the additions, deletions or modifications from these covenants to which such property will be subject. All property subject to each Supplemental Declaration, at DIDA's option, shall be a part of The Park for all purposes under this declaration, except as expressly otherwise provided in the Supplemental Declaration.

**ARTICLE VII  
INSPECTION AND ENFORCEMENT OF RESTRICTION**

7.1. Inspection. DIDA may from time to time at any reasonable hour or hours, enter and inspect the improvements to ascertain compliance therewith upon proper written notice and, where required, only when accompanied by a representative of the Owner, tenant or occupant of any site on the property.

7.2 Enforcement. Violation of any Protective Covenant or conditions shall give to DIDA the right to enter upon the site and to summarily abate or remove, at the expense of the violator, any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding against the violator who has or is attempting to violate any of these Protective Covenants and conditions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation, provided, however, DIDA shall give the Owner of the property and the offender, if not the Owner of the property, ten days prior written notice before investigating corrective actions and specifying in the written notice the nature of the violation.

7.3 No Waiver of Right to Enforce. Failure of DIDA or Owner of a site to enforce any of the Protective Covenants or conditions contained herein shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other Protective Covenant or condition and DIDA or Owner of a site shall not be liable therefore.

7.4 Attorney's Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of the Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

**ARTICLE VIII  
TERMINATION, MODIFICATION AND PLATTING**

8.1 Term and Modification. These restrictions and covenants are to run with the land and shall be binding on all persons claiming under them for a period of twenty-five (25) years from the date these restrictions and covenants are recorded, after which time said restrictions and covenants shall be automatically extended for successive periods of ten (10) years. However, an instrument signed by a majority of the then owners of the lots in The Park as above described (including all additions under Section 6.2 hereof) may be recorded to change said restrictions and covenants in whole or in part. As long as DIDA owns any land within the Park (including additions thereto under Section 6.2), any amendment of the restrictions must be agreed to by DIDA. This right of amendment shall exist during the initial twenty-five (25) year term and any renewal term as above provided and the amendments shall be effective upon recordation in the appropriate Real Property Records of Strafford County, New Hampshire.

8.2 Platting. DIDA may at any time and from time to time hereafter, dedicate, alter, change or close, partially or completely, public areas, streets, rights-of-way or easements until such time as they are accepted by the City of Dover or another appropriate entity; and may therefore, execute, acknowledge and file for record in the Strafford County Register of Deeds office any and all plats or drawings of all or any portion of the property thereby dedicating all public areas, streets, rights-of-way, easements and other matters shown on said plats to public use and may indicate on each plat or drawing the building set-back lines applicable to the land covered by the plat. The consent of any and all owners of the portions of the property which by said plat is being dedicated to the public shall be required on the plats, but no other consents shall be required. Leasees and Grantees shall not, without prior written consent of DIDA, grant any rights-of-way or easements upon their premises.

8.3 Effective Date of Modifications-Recordation. Any such amendment, modification, change or termination shall be effective upon filing of the appropriate document with requisite signatures in the Real Property Records of Strafford County, New Hampshire.

**ARTICLE IX  
OWNER'S ASSOCIATION**

9.1 DIDA shall cause an Owner's Association ("Association") to be organized and formed as a non-profit Corporation under the laws of the State of New Hampshire after ten (10) properties within the park have been sold, or at DIDA's option, at an earlier date. The purpose of this Association shall be to provide for the general maintenance, repair, preservation, upkeep and protection of the common areas of the Park, to collect the annual common area maintenance charges from the Owners and such other purposes as stated in the Articles of Incorporation consistent with the provisions of this Declaration and the amendments hereto.

9.2 DIDA shall be and remain permanent member of the Association notwithstanding its property ownership; shall be represented by its Chairperson or designee; and shall have the right to veto actions of the Association. While a property owner, DIDA shall vote in accordance with its property ownership, per paragraph 9.5 below.

9.3 Each individual or entity who is a record owner of fee title to any portion of the property subject to these restrictions (herein referred to as an "Owner") shall upon and by virtue of becoming an Owner

automatically become a member of the Association when such Association is formed and shall remain a member thereof until his ownership ceases for any reason, at which time the individuals membership in the Association shall automatically cease. Each Owner's membership in the Association shall be to and shall automatically follow legal ownership of the property and may not be separated from such ownership. Whenever legal ownership or a portion of the property subject to these restrictions passes from one person or entity to another or where the lessee's interest in a ground lease is transferred, by whatever means, it shall not be necessary that an instrument provide for transfer of the membership in the Association, and no certificates of membership be issued.

Each individual or entity who is a record owner or holder of a ground lease of wetlands, conservation land or other similar lands set aside and not intended for development shall not, by virtue of such ownership or lease, become members of the Association.

9.4 DIDA may retain legal title to all or portions of the common areas and facilities in The Park until such time as DIDA has completed improvements thereon and until such time as the Association has been formed and has assumed responsibility for the operational maintenance of the same or the same are dedicated to the public. Until the Association is formed and management responsibility for common areas is assigned to the Association, DIDA shall be entitled to exercise all the rights and privileges pertaining to the common areas.

9.5 Each Owner, in election of directors, and all other matters submitted to a vote by the members of the Association, shall be entitled to one vote for each acre, or major fraction thereof (rounding up the nearest acre for any fractional acreage greater than or equal to one-half acre) of property within The Park subject to these restrictions in which such individual or entity holds the interest required for membership in the Association by this Declaration. When more than one person holds such interest or interests in the property, all such persons shall be members, and the votes for such portion of the property shall be exercised as they among themselves determine, but in no event, shall more than one vote be cast in respect to each acre of the property within The Park which is subject to these restrictions.

## **ARTICLE X MISCELLANEOUS**

10.1 Severability. The invalidation of any one of the restrictions herein set forth or the failure to enforce any of said restrictions at the time of its violation shall in no event affect any of the other restrictions nor be deemed to be a waiver of the right to enforce the same thereafter.

10.2 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the 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 declaration is contained in the instrument by which such person acquired an interest in said property.

10.3 Temporary Structures. No temporary building or structure shall be permitted on the property, except trailers, temporary buildings, barricades, and the like shall be permitted for construction purposes during the time of construction or improvements. Such structures shall be placed as inconspicuously as possible and cause no inconvenience to the general public, and shall be removed not later than thirty (30) days after the date of substantial completion of that construction.

10.4 Titles. The titles, headings or captions used in this instrument are for convenience only and are not to be used in construing this instrument or any part hereof.

10.5 Continuing Effect. These Protective Covenants shall run with the Property and be binding upon and inure to the benefit of all future owners, and/or tenants of all or any portions of the property, their heirs, executors, and assigns.

10.6 Definitions. As used in the Declaration (including all supplements and Amendments) the term "Owner" means and refers to the record owner of a parcel of land or the Lessee of a ground lease from DIDA as Ground Lessor of a portion of The Park subject to the Protective Covenant, but notwithstanding any applicable theory, a mortgagee or beneficiary of a deed or trust or a collateral assignee of a ground lessee's interest in ground lease shall not be an "Owner" unless and until such mortgagee or assignee has acquired title to the land or ground lease pursuant to a foreclosure or by way of a deed in lieu of foreclosure.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the date first hereinabove written.

PROPERTY OWNER

DOVER INDUSTRIAL DEVELOPMENT AUTHORITY

BY: \_\_\_\_\_

\_\_\_\_\_  
George Gauthier, Chairman

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD

SS: January 13, 1993

Personally appeared George Gauthier and \_\_\_\_\_ known to me, or satisfactorily proven to be the person whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purpose herein contained.

Before me, Karen Lee Larson, Notary Public  
My Commission Expires September 7, 1993