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DECLARATION OF INDUSTRIAL
STANDARDS AND PROTECTIVE
COVENANTS
FOR McCARA FIRST ADDITION

THIS DECLARATION, made this 11 day of November, 1980 by Moorhead-Clay County Area Redevelopment Authority, with its principal place of business at Moorhead, Minnesota, (hereinafter called "Authority")

WHEREAS, the Authority 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" attached hereto, and as shown on the copy of the Plat attached hereto as Exhibit "B", and

WHEREAS, the Authority 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:

- 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. (Letters (a), (b), (c), (d) and (e) above are sometimes collectively called the "Criteria Standards".)

NOW, THEREFORE, Moorhead-Clay County Area Redevelopment Authority, hereby declares that the premises as described herein, shall be developed in accordance with the following standards and guidelines and in line with the aforementioned Criteria For 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 Authority 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 herein after 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 so long as any lot is owned by the Authority it shall be considered as one building site.
- b) Authority - shall mean Moorhead-Clay County Area Redevelopment Authority.
- c) 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.
- d) 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.
- e) 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.
- f) Building - shall consist of the main building and all accessory buildings and physical structures used in connection therewith.
- g) Park - shall consist of all of the land described in and located within the boundaries of the Plat of McCara First Addition.

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 Board shall consist of five (5) members. The initial Board shall be made up of members of the Authority as appointed by the Authority and the first five members of the Board shall be appointed for terms on the Board by the Authority for periods of one, two, three, four, and five years so that the term of one Board member shall expire each year, and thereafter each new Board member shall be made up of members of the Authority until there are five separate owners (exclusive of mortgagees) of land in the Park at which time the Board shall then consist of three members of the Authority and two landowners (exclusive of mortgagees) with the Authority members on the Board being appointed by the Authority, and the landowners (exclusive of mortgagees) on the Board being elected by a majority vote (landowners shall be limited to one vote per building site regardless of the number of persons who own an interest in a

building site) of the landowners (exclusive of mortgagees) in the Park. The Board shall be advisory to the Authority and shall meet at the call of the Authority to assure prompt review of plans, and shall keep written minutes of its deliberations and findings, and shall make recommendations on said plans to the Authority within fifteen 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 Authority 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 Authority, contrary to the best interests of the Park.

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 Authority. 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 Board for review and recommendation to the Authority, before construction begins. The Authority shall approve or disapprove said plans within fifteen (15) days from the date complete specifications and plans are received by the Authority. In the event no action is taken on said plans by the Authority within said fifteen (15) day period, said plans will be deemed to have been approved by the Authority. If approval is granted, a copy of the plans and specifications shall be retained on file by the Authority.

Following completion of the project, the owner shall furnish the Authority a complete set of as-built drawings showing exact field location of all improvements, including below grade installations.

c) Acceptance of Covenants:

Each landowner or tenant within the Park agrees to abide by all regulations set forth in these covenants in developing and maintaining his property and any boulevards adjacent thereto as defined by the ordinances of the City of Moorhead as amended from time to time. These covenants apply to all lots within the Park, except Lot 4 Block 1 and Lot 1 Block 6 which shall be used for utilities and holding pond purposes as determined by the Authority from time to time.

d) 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 Authority, accompanied by statements of concurrence by owners of a majority of the then building sites within the Park of McCara First Addition, provided that such amendment, modifications or termination shall not retroactively affect improvements previously installed under this covenant.

e) Inspection:

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

f) 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 Authority and given thirty days to submit to the Authority a plan to correct the alleged violation or deficiency which plan shall contain a proposed starting and completion date to remedy the non-compliance. If the non-compliance persists beyond the date determined by the Authority to remedy the non-compliance, or if a property owner fails to submit a proposal to remedy the non-compliance with the thirty-day period, the Authority shall have the authority to correct the condition at the owner's expense and to take such legal action as it deems appropriate.

g) Variances:

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

h) No Speculative Purchases:

These sites are being sold by the Authority with the expectation that the purchaser will, in a timely manner, construct a building and improve the lot according to the approved plans. Building permits for such construction and improvement must be secured within twelve (12) months of the

closing date of the purchase of the site and construction must be completed within twenty-four (24) months of the date the building permit is issued, and landscaping shall be completed no later than twelve (12) months thereafter, or the Authority may, at its option, re-purchase the land from the purchaser at the original purchase price of the land with no interest charged. All costs and expenses incurred by the Authority shall be paid by the purchaser or lessee whose sales contract or lease is being cancelled, and the same shall be deducted from the repurchase price.

i) Failure to Completion Construction:

In the event any building contemplated for construction on a building site in the Park is abandoned for any reason prior to completion of construction, the owner shall remove the same from said building site at his own expense within six (6) months of abandonment. If said structure is not removed within said six (6) months period, Authority shall have the right to remove the same and deduct the cost of said removal from the re-purchase price of the land as provided for in sub-paragraph h. above, or at the option of the Authority purchase the same at 25% of owner's cost of construction to time of abandonment.

j) Occupancy Permits:

If a building site subsequently to be occupied by an owner or tenant other than the original owner or tenant, for whom the building, parking, and traffic pattern was designed and approved, the prospective new owner or tenant must submit an application to the Board for an occupancy permit prior to occupancy, which occupancy permit must be approved by the Authority. The application must include detail on the requested use of the building site, along with information on the frequency of expected traffic and anticipated parking requirements. The purpose of such occupancy permit is to assure that the building site, traffic flow, and parking of the original building site will handle the new occupancy requirements. The Authority may require modification of improvements before issuing such permit. No new occupancy may take place without such permit.

k) 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.

l) Most Restrictive Regulation Governs:

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. PERMITTED USES AND PERFORMANCE STANDARDS:

a) Not Permitted on Property:

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) Permitted Uses:

Without otherwise limiting the provisions of Paragraph (a) above or of any other terms and conditions of this Declaration, the permitted uses shall be for industrial, research, assembling or processing, jobbing; wholesaling and uses ordinarily incidental to the operation of a permitted principal use. All uses shall comply with the zoning regulations as set forth by the City of Moorhead, Minnesota. Said zoning regulations shall govern if inconsistent herewith to the extent actually inconsistent. If not inconsistent herewith, the standards herein contained shall be considered as requirements in addition to said zoning regulations. The premises shall not be used for the following purposes:

Auto salvage yard; storage and/or sale of used materials as a sole or primary use of the building site; any use which would create an excessive amount of sewage or a quality of sewage which would cause a disposal problem; manufacture, storage, or sale of explosives, acetylene gas manufacture, ammonia or chlorine manufacture, anhydrous ammonia bulk storage plants; and any other trade, industry, or use, which in the opinion of the Authority, will be injurious, hazardous, noxious, or offensive to an extent equal to or greater than those listed above.

ARTICLE IV. 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 Authority 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.

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 Authority 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) Lots Abutting Highway 231 and Interstate 94:

Direct access from U. S. 231 and I-94 is prohibited. Lots adjacent to Highway I-94 must have fifty (50) foot set-backs from the highway right-of-way, and such set-backs must be landscaped by the first property owner other than the Authority and shall be maintained by said property owner and its successors and assigns. Authority shall have no authority to grant a variance from this section without the written concurrence of the City of Moorhead.

e) Utility 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.

f) Other Easements:

The Authority 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 Authority 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.

g) 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 Authority.

h) Telephone and Electrical Services:

All electrical service lines and telephone lines to buildings shall be underground. Transformers and switches placed above grade shall be screened from view with landscaping. Expenses for underground service and landscaping shall be born by the property owner. The property owner shall obtain and submit to the Board as-built plans showing location of underground utilities on his property.

i) Underground Electrical 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.

j) Solar

To preserve solar access uses, no structure or landscaping element shall be approved that will interfere with direct sun rays on the adjacent property owners' existing rooftop, or approved plans for a rooftop, as cast by the sun on December 21st between the hours of 9:00 a.m. and 3:00 p.m. The board may waive such requirement if the adjacent property owner(s) agrees in writing to waive such solar protection. In addition, the board may also waive such requirement if it is demonstrated by the applicant that such a restriction will place an undue hardship on his proposal.

ARTICLE V. PLANS AND BUILDINGS:

a) Architectural Standards:

Buildings shall be designed to be aesthetically pleasing and the proposed exterior treatment shall be submitted to the Development Control Board and approved by the Authority.

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 Board.

c) Approval of Authority:

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 the Development Control Board and approved by the Authority as to conformity and harmony with existing structures in the development, and as to location of the improvements on the building site, giving due regard to the anticipated use thereof as may affect adjoining structures, use and operations, and as to location of the improvements with respect to topography, grade, and finished ground elevation and as to fulfilling the purposes and Criteria For Standards herein contained; provided, however, that the Authority or any members thereof, its agents or employees, shall not be liable to anyone, in damages or otherwise, who has submitted plans for approval or to any landowner by reason of mistake in judgment, negligence or non-feasance of the Authority, its members, agents or employees arising out of or in connection with the approval or disapproval of any such plans. Likewise, anyone so submitting plans to the Authority for approval, by submitting such plans, and any person when he becomes an owner, agrees that he or it will not bring any action or suit to recover for any damages or other relief against the Authority, its members, agents or employees. The Authority shall not unreasonably withhold approval of any plans submitted pursuant hereto, provided, however, that failure to meet the Criteria For Standards or the standards contained herein shall be grounds for the Authority's reasonable disapproval of any such plans. All construction work shall, upon approval of plans by the Authority, be carried on with dispatch and upon completion thereof, the site shall be promptly landscaped.

d) Building Codes:

All improvements shall be constructed in conformity with the building codes of the City of Moorhead as amended from time to time and these covenants, which is more restrictive.

e) Licensed Architect:

All building plans shall be prepared by an architect duly licensed under the then existing registration laws of the State of Minnesota for structures exceeding \$30,000.00 in value or such minimum value as required by Minnesota Statute 326.03 as the same may be amended from time to time.

f) 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 Authority.

g) Exterior Lighting Fixtures and Lighting Plan:

All exterior lighting fixtures and standards shall be provided by the owner. The overall lighting plan for the building site shall be subject to the approval of the Authority.

h) Floor Height of Buildings:

The finished floor of all buildings constructed in the Park shall be a minimum of thirty inches above top of curb.

i) Suggested Incorporated Features:

Owners are strongly encouraged to incorporate energy-saving features within the siting, landscaping and design of the structure. Features may include maximizing southerly exposure, active and/or passive solar features, earth berming, wind energy systems, photovoltaics and landscaping buffering elements.

ARTICLE VI. LANDSCAPING, OUTSIDE STORAGE AND MAINTENANCE

a) Building Site Plan:

Building sites occupied by a building shall be landscaped in accordance with plans approved by the Authority. Such landscaping shall include seeding, sodding, planting of trees, shrubs, berming and other customary landscape treatment for all building sites.

b) Site Maintenance:

The landscape development, having once been installed, shall be maintained in a neat and adequate manner which shall include mowing of lawns, keeping of trees and hedges trimmed, replacement of dead trees, hedges and grass, and watering when needed in accordance with existing City of Moorhead water management policies.

c) Approval to Alter Plan:

The approved plan for landscaping the building site may not be altered without submitting a revised plan for approval.

d) 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.

e) 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.

f) 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.

g) Outside Storage:

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 Authority. See Article IV, Section C, Sub-paragraph 2.

h) Outdoor Display of Equipment or Products:

Outdoor display of new or used equipment or products will be permitted. These areas must be landscaped in accordance with the guidelines set forth for parking.

i) 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.

j) 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.

ARTICLE VII. 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) Size of Spaces:

Parking space for passenger automobiles shall consist of no less than 200 square feet; the parking space for trucks shall consist of no less than 650 square feet.

c) 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.

d) Location of Loading/Unloading Areas:

Truck loading and receiving areas shall not be on the front side of the building, except that the Authority 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.

e) Maintenance of Parking and Loading Areas:

From and after the date that the building is constructed on a building site, the owner or owners of such building site shall maintain adequate on-site parking space and loading facilities to serve the needs of each such building site, taking into account the building or buildings located or to be located thereon and the use made or to be made thereof, and shall keep such parking areas, drives and loading areas surfaced and properly kept and maintained at all times.

ARTICLE VIII. ADVERTISING SPACE:

The Authority 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 For 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 lands subject to these standards shall be submitted to the Development Control Board for review and approval by the Authority. Such applications shall be considered in the light of the Criteria For Standards set forth herein and other appropriate data and shall either approve the proposed sign as submitted or require that the proposal be altered so that any sign constructed in connection therewith shall be such as to fulfill the said Criteria For Standards. In the event that the Authority does not approve any such sign proposals within forty-five (45) days after receipt by the Development Control Board, said sign proposals shall be deemed to have been approved by the Authority, provided, however, that no sign located on the land subject hereto shall:

a) Only Company or Company Products:

Be what is known as 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 Authority.

b) Flashing, Pulsating, or Rotating Light/Lights:

Be permitted to have in use any flashing, pulsating, or rotating light or lights.

c) Roof-Top:

Be a sign located on a roof-top.

ARTICLE IX. 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 land owner that fraction of the total maintenance cost which the land owner'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, Lot 4 Block 1, Lot 1 Block 6 of McCara First Addition, 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:

"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 car from the lead track to the spur track and back to the lead track from the spur track.

Landowners or tenants located adjacent to the lead track shall pay their proportionate share of the costs of maintenance, upkeep, snow removal, and all other necessary repairs of the lead track once a year. Maintenance for the purpose of these covenants shall include responsibility to provide proper drainage and to keep the tracks free and clear of snow, ice, weeds and other obstacles and debris and to provide a safe workway for Railroad employees. Said proportionate share shall be calculated by dividing the total of said costs by a fraction determined by using a number for the numerator which is equal to the amount of footage of trackage of the

lead track which passes through the landowners or tenants property and by using a number for the denominator which is equal to the amount of total footage or trackage of the lead track exclusive of trackage which passes through any streets in the Park, and dividing said quotient by two. Said proportionate share of said costs shall be paid by the landowners or tenants to the Authority by February 15th of each year for the previous period ending December 31st of each year.

Landowners or tenants located adjacent to the lead track shall be responsible for and pay for all installation and maintenance and repairs of all spur tracks and spur track switches which serve their respective lots.

Landowner or Tenant 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 track.

Landowner or Tenant further agrees that spur track shall be constructed, maintained and operated 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, to assume any and all liability for and to 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 the compliance with or violation of the provisions of such public authority or permission.

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

Landowner or Tenant, 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 Landowner or Tenant at Landowner or Tenant's expense.

Landowner or Tenant shall bear and pay any costs for changes or alterations in that portion of track owned by Landowner or Tenant 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.

Any work performed by Landowner or Tenant in constructing or maintaining the 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 Landowner or Tenant fails to maintain said facilities or that portion of the track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Authority may request Railroad to refuse to operate over the track.

If said track is used for the receiving, forwarding or storing of hazardous commodities, Landowner or Tenant 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 remain, any material, structure, pole or other obstruction within $8\frac{1}{2}$ feet laterally of the center or within 23 feet vertically from the top of the rail of said 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. Landowner or Tenant agrees to indemnify Authority, its commissioners, agents, or employees and save it harmless 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 any breach of the foregoing or any other covenant contained herein.

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 from such damages to property or injury to or death of persons that may result therefrom.

Landowner or Tenant shall pay its proportionate share of all compensation and assessments required at any time by a municipality, public authority or person for the privilege of constructing, maintaining and operating said track.

Landowner or Tenant shall indemnify and hold harmless Authority, its commissioners, agents or employees for loss, damage, injury or death from any act or omission of Landowner or Tenant, 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 Landowner or Tenant permits a party or parties, hereinafter called "Permittee", other than itself or the Railroad to use said tracks for receiving, forwarding or storing shipments, Landowner or Tenant 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 successor and assigns of the Landowner or Tenant and 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 are 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 understands or agreements with the Railroad have the right to use the 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 private businesses or industries owning a private switch and track which comes off Authority owned lead 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 private businesses or industries will be required to transfer title to any privately owned switch and track to Railroad upon the decision of Authority to convert ownership of said tracks to Railroad.

ARTICLE X. ENFORCEMENT:

a) Approval of Plans by the Authority:

Whenever approval of the Authority is required, after receipt of the request and documents required to be submitted to the Authority for approval, the Authority shall take action upon said request or documents within the period required by the Authority to act as stated in various articles of these covenants. In the event no action is taken on said request, documents or plans by the Authority within said time period, said request, documents, or plans will be deemed to have been approved by the Authority. A copy of the request, documents and plan approval shall be retained on file by the Authority.

b) Enforcement of Methods:

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

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

c) Failure of Authority to Enforce:

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

d) Authority's Right to Grant Variances:

The Authority may grant variances from the strict application of the provisions of these standards specifically set forth in cases where by reason of extraordinary and exceptional conditions of any building site or circumstances the strict application of any standard would result in peculiar and practical difficulties or exceptional or undue hardship upon the owner of any building site, provided any such variance shall meet with the Criteria For Standards provided for herein.

e) If a Section is Invalidated:

Invalidation of any of the provisions of these standards whether by court order or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.

IN TESTIMONY WHEREOF, the said Moorhead-Clay County Area
Redevelopment Authority has caused these presents to be executed this
day of NOVEMBER, 1981.

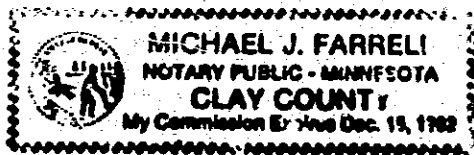
MOORHEAD-CLAY COUNTY AREA
REDEVELOPMENT AUTHORITY

By Robert D. Regent
Chairman

By James H. Stevenson

STATE OF MINNESOTA)
) SS.
COUNTY OF CLAY)

On this 11th day of November, 1981,
before me, a Notary Public within and for said County, personally appeared
Robert D. Engelstad and James H. Stenerson to
me personally known, who, being each by me duly sworn did say that they are
respectively the Chairman and the Secretary of the corporation named in the
foregoing instrument, and that the seal affixed to said instrument is the corporate
seal of said corporation, and that said authority of its Board of Commissioners,
and said Robert D. Engelstad and James H. Stenerson
acknowledges said instrument to be the free act and deed of said corporation.



[Handwritten Signature]

Notary Public
Clay County, Minnesota
My Commission expires: 15 Dec 1982

STATE OF MINNESOTA, }
COUNTY OF CLAY. } ss.

I hereby certify that the within instrument was
filed in this office for record on the 12th
day of November A.D. 1981 at 11:25
o'clock A. M. and was duly Recorded on
Micro Card # 367662

Margaret M. Darby
County Recorder

or _____ Deputy.

*In the Clay Co. Area Redevelopment Auth
Box 1076
MkA, 236-5458 Rick*