

## **RESTATED DECLARATION OF PROTECTIVE COVENANTS**

This Restated Declaration of Protective Covenants made this 2<sup>nd</sup> day of July, 2002 by the City of Manistee, a municipal corporation with a principal office at 70 Maple Street, Manistee, Michigan 49660, hereinafter referred to as the "City";

### **WITNESSETH:**

**WHEREAS**, the City owns certain real property located in Manistee Township, Manistee County, Michigan, commonly called Manistee Renaissance Park, and did on or about November 18, 1997 create easements, restrictions, covenants and conditions affecting such property for the purpose of developing the same as an Industrial Park, and for the mutual benefit of the purchasers and;

**WHEREAS**, since November 18, 1997 the City has sold lot 5 to Distributed Power, LLC; and

**WHEREAS**, the Owners of all the lots within the Manistee Renaissance Industrial Park desire to amend certain Protective Covenants as specified herein;

**NOW, THEREFORE**, the City of Manistee and Distributed Power, LLC, representing all of the Lot ownership of the Manistee Renaissance Industrial Park, hereby declares that the property described below, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements and obligations hereinafter set forth.

### **ARTICLE I** **DEFINITIONS**

**Section 1.0** The following words and terms, when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

**Section 1.1** "Properties" shall mean and refer to the property described in Attachment A.

**Section 1.2** "Lot" shall mean and refer to a subdivided lot in Manistee Renaissance Park (described by meets and bounds until the plat is completed).

**Section 1.3** "Owner" shall mean and refer to the owner of record, whether one or more persons, firms, associations, corporations or other legal entities, of the fee simple title to any lot but shall not mean or refer to the mortgagee unless and until such mortgage has acquired title pursuant to

foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event of a land contract covering a lot, the holder of the land contract vendee's interest shall, in the absence of an agreement between the vendor and vendee to the contrary, be considered the Owner and the land contract vendor shall have the rights of a mortgagee under this Declaration.

## **ARTICLE II** **INTENDED USE**

Section 2.1 The properties shall be used only for industrial, manufacturing, warehousing, distribution or research center purposes. It is the intent of this restriction to encourage the use of this land in such a way that it will create and maintain industrial and manufacturing employment. The properties shall not be used for residential purposes, nor shall the retail sale of any merchandise or services take place within the Industrial Park. The retail sale of food, beverages and other such convenience items to occupants and employees is permitted, so long as these items are not offered for sale as the primary service.

Section 2.2 The properties must be used only in compliance with the laws and ordinances of the Township of Manistee, Manistee County, the State of Michigan and the United States.

## **ARTICLE III** **COMMENCEMENT OF CONSTRUCTION**

Section 3.1 Each Owner shall commence construction in accordance with approved plans within one year after the date of purchase of a lot from the City and complete construction within eighteen months from the date of said purchase. In the event an Owner is prevented from commencing or completing construction within the time herein provided, by cause or causes beyond his, her or its control, the period allowed for commencing or completing construction may be extended at the discretion of the City for a period equal to the time lost as a result of such cause or causes beyond its control.

Section 3.2 Failure to comply with these provisions shall give the City the right to repurchase property. The price shall be established at the purchase price, less the amount of any outstanding mortgages or other encumbrances against the property.

## **ARTICLE IV** **RESALE RIGHTS**

Section 4.1 No Owner of a vacant lot shall sell or lease the lot to any third party without the written consent of the City. In the event the Owner of a vacant lot desires not to proceed with

development, the City and its successors and assigns, retain the option to refund the purchase price, less any outstanding mortgages or other encumbrances against the property and all costs in connection with the repurchase or reconveyance, and enter into possession of the land. This section is not intended to prohibit the transfer of said property to a company, real estate, or holding corporation, but such transfer shall be subject to all the restrictions herein contained, including this paragraph. It is the intent of this section to prohibit or prevent parties from holding unimproved land for speculative purposes.

Section 4.2 Any Owner of an improved or developed lot may convey said property to a third party, subject only to the covenants and restrictions contained in this Declaration.

## ARTICLE V CONSTRUCTION LIMITATIONS

Section 5.1 All construction on the properties shall be subject to the following:

(a) Site Plan and Use, Review and Approval. The City retains the right of review and approval regarding any planned use or change of use of the lot, any proposed buildings and additions thereto and site development of the properties. This review and approval will continue until all lots have been sold. The following documentation shall be submitted to the City of Manistee Zoning Administrator in connection with a review and approval request.

1. A site plan of the lot drawn to the same requirements as the Manistee Township zoning ordinance site plans.
2. The site or building plan shall include elevations of all building sides showing windows, doors, architectural treatment and materials.

(b) Buildings constructed on the lots and uses conducted therein shall also conform to the standards specified by the Township of Manistee zoning ordinance and applicable construction codes.

(c) The exterior material on the front walls must be brick, decorative metals or plastic panels or an equivalent design to provide an attractive facade. Buildings constructed on corner lots shall be considered as having two fronts.

(d) When walls other than described in (c) above are constructed of light-weight aggregate or concrete block, such walls shall be finished in stucco, granite or other decorative equivalent or the joints shall be tooled and the walls shall be painted.

Section 5.2 Utilities. All wires and utilities shall be located underground.

Section 5.3 Access. No driveway access to Caberfae Highway shall be permitted. The side of lots which abut M-55 shall be considered the rear yard. All access shall be from Eastlake Road, Pine Creek Road or interior roads.

Section 5.4 Setbacks. The requirements of the Manistee Township zoning ordinance apply. Buildings and structures shall be set back a minimum of 100 feet from the Caberfae Highway right-of-way.

## ARTICLE VI GENERAL RESTRICTIONS

Section 6.1 Storage. Depending on the lot, outside storage may be allowed provided that adequate landscaping is provided to minimize the visual impact. Whenever possible all goods, equipment, supplies or other materials shall be stored in completely enclosed buildings. All outside storage and landscaping shall be shown on the appropriate site plan and approved by the City Planning Commission.

Section 6.2 Fencing. All fencing for screening, security or other purposes shall be attractive in appearance and shall be industrial-type fencing of galvanized or non-ferrous materials or decorative masonry wall.

Section 6.3 Landscaping. Land outside the building and surface parking areas shall be landscaped and maintained in a healthy growing condition. Many of the areas of the Renaissance Park are wooded and the Grantee agrees that he will preserve existing trees and wooded areas to the extent that it does not affect the desired development of building or parking areas. Trees within the Caberfae Highway setback shall receive special consideration consistent with the needs of the development.

Section 6.4 Lighting. All exterior lighting shall be designed to confine illumination within the lot boundaries. Indirect and low level exterior lighting is desired.

Section 6.5 Off-Street Parking. No parking shall be permitted on any public or private street or road or any place other than designated paved parking areas. Each Owner shall be required to provide off-street parking for all employees, customers and visitors.

(a) All driveways and parking areas shall be surfaced with concrete or asphalt and drained to maintain storm run-off within each property.

(b) Off-street parking areas shall be used for the parking of passenger vehicles or commercial and other vehicles incidental to the operation conducted on the property. No commercial repair work or any service of any kind shall be conducted on such parking areas.

Section 6.6 Signs. The following sign requirements and restrictions shall apply to the properties in addition to sign regulations of the Township of Manistee.

- (a) All signs shall be ground mounted and shall not exceed six feet in height.
- (b) Signs shall include the address number in a prominent position visible from the road.

Section 6.7 Maintenance of Property. Owners shall keep their lots, buildings and improvements in a safe, clean, healthful and attractive condition and shall comply in all respects to all government, health and police requirements.

## **ARTICLE VII** **GENERAL PROVISIONS**

Section 7.1 Duration. The Covenants and Restrictions set forth in this Declaration shall run with and bind all the properties described in Article I hereof, and shall inure to the benefit of and be enforceable by the Owners of any land subject to this Declaration, their respective successors, assigns, heirs, executors, administrators, and personal representatives, and shall be continue in force and effect, until such time as the Owners representing the Owners of at least two-thirds (2/3) of the Lots (one Lot equaling one), shall sign an instrument, or instruments, in which they shall agree to change said Covenants and Restrictions in whole or in part, but no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to the Owner of every lot at least ninety (90) days in advance of the action taken in authorizing said agreement; and, in any event, any changes contained in such agreement shall not become binding and effective until six (6) months after the recording of the aforesaid fully executed instrument or instruments containing such agreement, unless all the Owners agree in writing to a different effective date.

Section 7.2 Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, by regular mail, with first class postage prepaid, addressed to the Owner at the last known address as it appears on the records of the Township Assessor at the time of such mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners.

Section 7.3 Enforcement. The City, its successors and assignees, may enforce these Restrictions by restraining order or may prosecute at law or in equity a suit for damages or other remedy which the City, its successors or assignees, may have. Enforcement of these Covenants and Restrictions shall be by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any Covenant or Restriction. Failure by any Owner to enforce any Covenant or Restriction herein contained for any period of time, shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

**Section 7.4 Powers of the City.** All the powers, rights and privileges granted and reserved to the City hereunder shall be exercisable by the City until such time as the City shall have sold all the lots. Thereafter all the said powers, rights and privileges shall be exercisable to the full extent thereof by the Owners.

**Section 7.5 Severability.** Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgement shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Owners have caused this instrument to be executed the day and year first above written.

Signed and Acknowledged in the  
Presence of:

CITY OF MANISTEE RENAISSANCE PARK  
70 Maple Street, Manistee, Michigan 49660

Mary Nemecek  
Witness: Mary Nemecek

Richard Mack  
By: Mayor Richard Mack

Heather Pietrasik  
Witness: Heather Pietrasik

Michelle Wright  
By: Michelle Wright, City Clerk

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STATE OF MICHIGAN     )  
  ) SS  
COUNTY OF MANISTEE    )

On July 2, 2002, before me, a Notary Public in and for said County, personally appeared Mayor Richard Mack and City Clerk Michelle Wright to me known to be the same person(s) described herein and who executed the within instrument, who acknowledged the same to be executed of their own free act and deed.

Mary M. Nemecek  
Mary M. Nemecek, Notary Public  
Manistee County, Michigan  
My Commission Expires: May 2, 2006

PREPARED BY: Bruce Gockerman, City Attorney (P14066)  
Gockerman Wilson Saylor & Hesslin  
414 Water Street  
Manistee, Michigan 49660