

PROTECTIVE COVENANTS
OF FERGUSON BUSINESS PARK
SPIRIT LAKE, IOWA

Except where otherwise specified, the following covenants shall apply to all lots within Ferguson Business Park:

1. No building, fence, wall, or other improvement or structure shall be constructed, erected, or maintained, nor shall any addition to or alteration of any building, fence, wall, or other improvement or structure be made until the plans and specifications therefore have been submitted to and approved in writing by the Developer. The plans and specifications shall indicate such information as the Developer may reasonably request, including the nature, kind, configuration, height, materials, floor plans, location and approximate cost of the structure or improvement.

Developer shall have the right to refuse or approve such plans and specifications based on Developer's judgment for aesthetic or other reasons. Developer shall have the right to consider the suitability of the proposed improvements, including landscaping, the harmony thereof with surrounding properties and improvements and effect upon, and the view from adjacent or neighboring properties. The decision of Developer shall be final.

If the Developer has not, within 30 days following its receipt of any proposed plans or specifications, approved or disapproved the plans and specifications or has not asked for additional information concerning the plans and specifications, then the Developer shall be deemed to have approved the plans and specifications submitted to it.

2. All construction on Lots 1, 2, 13, 21 and 22 shall be new construction. All main structures located on the these five lots shall include automatic sprinkler systems unless waived by Developer in writing.

3. All parking shall be off street. All outside storage shall be hidden from the view of neighboring property by a visual screen.

4. No truck or freight terminals shall be permitted.

5. All structures shall be constructed upon four-foot, frost-free footings. The size and appearance of any chimneys shall be subject to Developer's approval.

6. All driveways and parking areas on Lots 1, 2, 13, 21 and 22 shall be surfaced with six-inch, 4,000-pound test limestone concrete. All driveways and parking areas on other Lots within the subdivision shall be surfaced with six-inch asphalt or with six-inch, 4,000-pound test limestone concrete. All driveways and parking areas must be installed within one year after completion of the improvements on a lot. Driveways must extend to the street surface.

7. No exterior lighting shall be installed or maintained which unreasonably disturbs the occupants of the other lots.

8. These covenants run with the land. A purchaser of any lot and any person acquiring an interest in any lot by acceptance of said interest agrees to abide and be bound by these covenants.

9. In the event the parties hereto, their heirs, assigns or any other owner of lots within Ferguson Business Park shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any owner of any other lot or lots in said subdivision to prosecute any proceedings at law or in equity against anyone violating or attempting to violate any such covenant or restriction and either prevent him or her from doing so and/or to recover damages and obtain any other legal and equitable remedy available for such violation.

10. Invalidation of any one of these covenants by judgment or court action shall in no way affect any of the other provisions which shall remain in full force and effect.

11. These covenants can be amended by the owners of 75 percent of the lots in this subdivision.

Any amendment must be reduced to writing, signed by the required number of owners and shall be effective upon filing with the Dickinson County Recorder.

Notwithstanding the above, no amendment shall be effective without Developer's consent as long as Developer owns any lot within the subdivision.

12. The Developer at its discretion may convey all property which it still owns within the subdivision to a grantee whom it may designate as a Successor Developer. The Successor Developer shall have all the rights and privileges of the Developer as set out above.

FERGUSON LANDSCAPE CORPORATION

By: Renee Quana Secretary
Developer

CERTIFICATE OF SURVEY

I, Robert V. Bendixen of Jacobson-Westergard & Associates, Inc., do hereby certify that I am a licensed land surveyor under the laws of the State of Iowa, Iowa License No. 9017, that at the instance and request of Ferguson Landscape Corp., I surveyed the tract of real estate located in Dickinson County, Iowa, described on the Proprietor's Certificate for the purpose of subdividing and platting said real estate into an addition to be known as Plat of Ferguson Business Park, Spirit Lake, Dickinson County, Iowa, the plat of which is attached hereto and made a part of this certificate. The real estate was surveyed under my direction and the same was staked out and platted into 29 separate lots, Lots 1 through 23, inclusive, Block 1, and Lots 1 through 6, inclusive, Block 2, as shown on said plat; the plat is a true and correct plat of said addition and sets forth the boundaries thereof with the size and dimensions of all lots in accordance with said survey and the streets serving all of said lots are shown on said plat. I further certify that all dimensions of said plat are shown in feet and decimals thereof and that the remaining corners of all affected lots will be marked with 5/8"x30" yellow-capped rebar at the completion of Drainage District #22 construction over the said plat real estate.


IN WITNESS WHEREOF, I have hereunto signed my name this 15th day of January, 2002.


 Robert V. Bendixen, License No. 9017
 Jacobson-Westergard & Associates, Inc.

APPROVAL OF THE PLANNING AND ZONING COMMISSION
 OF THE CITY OF SPIRIT LAKE, IOWA

The undersigned, Robert Bergquist, being the Chairman of the Planning and Zoning Commission of the City of Spirit Lake, does hereby certify that the Plat of Ferguson Business Park, City of Spirit Lake, Dickinson County, Iowa, has been submitted to said Planning and Zoning Commission of the City of Spirit Lake for its approval; that the plat has been found to be in conformity with the laws of the State of Iowa and the ordinances of the City of Spirit Lake and that therefore said Planning and Zoning Commission has approved said Plat on the 7th day of January, 2002, and has recommended approval of same by the City Council of the City of Spirit Lake, Iowa.

Dated this 7th day of January, 2002.


 Robert Bergquist
 Chairman of Planning and Zoning
 Commission of the City of Spirit Lake, Iowa

RESOLUTION NO. 02-03

A RESOLUTION ADOPTING
PLAT OF FERGUSON BUSINESS PARK
CITY OF SPIRIT LAKE, IOWA

WHEREAS, the City of Spirit Lake, State of Iowa, is a duly organized municipal corporation; and

WHEREAS, the Plat of Ferguson Business Park, is located in the City of Spirit Lake, Iowa; and

WHEREAS, there has been presented to the City Council by the Planning and Zoning Commission, a recommendation for approval of the final plat of Ferguson Business Park, City of Spirit Lake, Iowa; and

WHEREAS, the Developer and the City of Spirit Lake have entered into an agreement with regard to construction of improvements within the plat, a copy of said agreement attached hereto and by this reference incorporated herein.

NOW, THEREFORE, IT IS HEREBY RESOLVED that with the above resolution the final plat of Ferguson Business Park, City of Spirit Lake, Iowa, be and the same is hereby approved as presented and the Mayor and Clerk are directed to certify the Resolution which shall be affixed to said plat.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Spirit Lake, Iowa this 8th day of January, 2002.

AYE: Mc Norton, Yeager, Yarns, Ricke, Casens

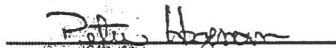
NAY: None

ABSENT:

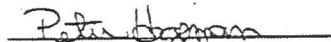


Barbara Ricke, Mayor Pro Tem

ATTEST:


Peter Hegeman, City Clerk

I, Peter Hegeman, City Clerk of the City of Spirit Lake, Iowa, hereby certify that the above and foregoing is a true copy of the resolution adopted by the City of Spirit Lake on the date aforesaid, as shown by the records of the City of Spirit Lake, Iowa.


Peter Hegeman, City Clerk

FERGUSON BUSINESS PARK DEVELOPMENT AGREEMENT

THIS AGREEMENT made on July 24, 2001, by and between the City of Spirit Lake, Dickinson County, Iowa, hereinafter referred to as "City", and Ferguson Landscape Corporation, hereinafter referred to as "Developer" and Dickinson County Drainage District #22, hereinafter referred to as "DD No. 22".

RECITALS

WHEREAS, Developer owns property described as the area platted on Exhibit "A" (Preliminary Plat of Ferguson Business Park, Spirit Lake, Iowa, dated January 16, 2001) and Exhibit "B" (Final Plat of Ferguson Business Park, Spirit Lake, Iowa, dated March 2, 2001) attached hereto and by this reference incorporated herein which will be developed into a Highway Commercial Development for the West 300 feet of Block One (1) and a Light Industrial Development for Block One (1), except the West 300 feet thereof, and Block Two (2), hereinafter referred to as "Development"; and

WHEREAS, in conjunction with such development, the City and Developer have undertaken or will undertake a program of construction of Infrastructure and Improvements, including, but not limited to, streets, curb and gutter, water, sanitary sewer, storm sewer, storm water detention areas, parks, bicycle trail, electrical, gas and phone at substantial cost to City, DD No. 22 and Developer with mutual intent to provide Light Industrial Development and Highway Commercial Development in the City of Spirit Lake; and

WHEREAS, the parties desire to establish between themselves their various obligations, duties and responsibilities.

NOW THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

RESPONSIBILITIES OF THE DEVELOPER

- A. **Developer** agrees to develop the property platted as Ferguson Business Park in substantially the form set forth in Exhibit "A" and "B" and offer for sale the same to the public as lots for Highway Commercial Use and Light Industrial Use. The **Development** shall consist of:
1. Lots for sale specifically designed for Highway Commercial use in Block One (1) and Light Industrial use in Block One (1) and Two (2), with the lots to be sized according to the City of Spirit Lake zoning regulations and as shown on Exhibits "A" and "B".
 2. Entrance signs identifying the development as a quality Light Industrial and Highway Commercial area dedicated to the City.
 3. Certain areas of the subdivision will have storm water detention ponds, green space areas and a bicycle trail as shown on Exhibit "A".
- B. **Developer** shall plat the entire property, but the construction of the utilities and infrastructure and streets shall be completed in phases. The first phase will commence by August 15, 2001, and **Developer** shall coordinate its responsibilities with **City** to properly complete all improvements within the subdivision.
- C. **Developer** will enter into contract for the services or installation of the following:
1. Surveying plat for subdivision purposes.
 2. Grading of the subdivision lots.
 3. Electrical service.
 4. Telephone service.
 5. Cable Television.
 6. Natural gas (if available).

7. Sidewalks. (Sidewalks shall be constructed by schedule to be determined by City).
 8. Entrance sign and landscaping along US Hwy 71 to be dedicated to the City.
 9. Grading and seeding of the green space parks and trails as per Exhibits "A" and "B".
 10. Topographical survey.
- D. Developer shall convey the footage necessary to the City so the City will have a 20-foot easement for a bicycle trail as shown on Exhibit "A" attached hereto.
- E. Should any additional easements beyond those shown on Exhibits "A" and "B" and the final plans and specifications for improvements regarding DD No. 22 on file with the County Auditor be required for construction of public improvements, including, but not limited to, water, sewer, storm sewer, lighting and streets, Developer shall grant and convey to City and DD No. 22 at no cost to the City or DD No. 22. Such easements shall be dedicated to City or DD No. 22 as necessary prior to the City or DD No. 22's construction of any additional improvements within these easements.
- F. Developer agrees to offer affordable Light Industrial and Highway Commercial sites in the City of Spirit Lake with the average sale price of all lots shown on Exhibit "A" not to exceed \$1.15 per square foot. Developer may sell lots for more or less than \$1.15 on an individual lot basis, but the total selling price of all lots cannot average more than \$1.15 per square foot, with the approximate sales price of each lot shown on Exhibit "D" attached hereto and by this reference incorporated herein.

- G. The parties agree that upon the sale of any lot, City shall receive Nine (9%) Percent of the sale price. Lots shall be listed with a local realtor chosen by the Developer. The realtor shall be a realtor with sufficient professionalism, market knowledge and resources to effectively market the properties. Developer agrees to enter into an agreement with such realtor which includes an obligation of the realtor to pay the fee from realtor's trust funds to the City.
- H. The Developer agrees to convey property to DD No. 22 property for the detention ponds and grant any other right-of-way easements required for the construction and improvements as proposed in the final plans and specifications filed by DD No. 22 with the County Auditor and pay all damages awarded to Developer to the City for the conveyance of said property and the granting of said right-of-way easements. In addition, Developer shall convey to DD No. 22 a 30-foot green space area around the permanent detention ponds located above the permanent detention pond elevation.

RESPONSIBILITIES OF CITY

- A. City shall perform the construction or enter into any contracts for the construction of and maintain the following infrastructure within the development as set forth in Exhibits "A" and "B" for the following:
1. Engineering of City installed infrastructure and street improvements.
 2. Streets, water mains and service lines, sanitary sewer mains and service lines and storm sewer and intakes as are necessary to service lots in the Development.
 3. Street lighting.

- B. The improvements within the Development will be constructed in phases. The first phase will commence by August 15, 2001, and the City shall use its best efforts to complete street grading and underlying utility construction on _____ Avenue, 33rd Street and Zenith Avenue as shown on Exhibits "A" and "B". Phase I shall include sewer and water mains to Lots One through Twenty (1-20) in Block One (1), street paving and sewer and water services to Lots One (1), Two (2) and Thirteen (13), Block One (1), with paved accesses onto US Hwy 71 as shown on Exhibit "A" with all underground utility service lines for Lots One through Twenty (1-20) to be completed within four (4) years of the date of this agreement. All other underground utilities and street paving serving the remaining lots in Blocks One (1) and Two (2) shall be installed as mutually agreed upon between the parties. All improvements constructed by the City and the Developer serving lots One through Twenty (1-20) in Block One (1) shall be completed within five (5) years of the date of this Agreement.
- C. City agrees to be solely responsible for the for approval of the design of the infrastructure and improvements to be constructed and maintained by the City and that such design will meet all applicable city, state and national standards.
- D. City agrees to accept ownership of and maintain the streets, street lighting, water lines, sewer lines, storm sewers and all other infrastructure normally owned and maintained by the City in other developments.
- E. Following its approval of the design, City shall hold Developer harmless from any claims arising should the design not meet applicable city, state or national standards. This shall not exempt the Developer from any claims arising from their

negligence in the event they participate in the construction of the infrastructure and improvements.

RESPONSIBILITIES OF DD No. 22

- A. **DD No. 22** shall perform construction or enter into contracts for the construction of and maintenance of the detention areas, structures, tiles and storm sewer outlets within the **Development** as set forth in the plans and specifications on file with the Dickinson County Auditor. In addition, DD No. 22 will be responsible as follows:
1. Maintain the 30-foot green space area around the detention ponds located above the permanent pond elevation.
 2. All excavated materials from said ponds shall be used to landscape various areas of development generally adjacent to the detention ponds, the Phase I lots and/or waterways.
 3. Topsoil shall be stripped, stockpiled and replaced and excavated material shall not leave the site except as mutually agreed by all parties.

GENERAL PROVISIONS

- A. This agreement shall be binding on the parties and their successors and assigns.
- B. This agreement shall be interpreted according to the laws of the State of Iowa.
- C. Developer reserves the right to alter the **Development** plan, phases, or zoning, subject to the approval of **City**, in order to adapt to changing market or economic conditions.
- D. Any notice, demand or communication under this agreement by either party to the other shall be sufficiently given if it is dispatched by regular mail, postage prepaid, or delivered personally as follows:

Developer, to: Ken Ferguson
Ferguson Landscape Corp.

PO Box 0B
Spirit Lake, Iowa 51360

City, to: Todd Dolphin, Department of Public Works
City of Spirit Lake, Iowa
1803 Hill Avenue
Spirit Lake, Iowa 51360

DD No. 22, to: Nancy Reiman, County Auditor
Dickinson County Courthouse
1802 Hill Avenue
Spirit Lake, Iowa 51360

E. Developer and City agree to cooperate in the execution and recording of any and all documentation necessary to insure that the share of the lot sales rebated to the City shall have a prior security interest to any mortgages placed of record against the lots.

IN WITNESS WHEREOF, the City, Developer and DD No. 22 have caused this Agreement to be duly executed as of the date and year first above written.

CITY OF SPIRIT LAKE, IOWA

Eric Nielsen
By: Eric Nielsen, Mayor

FERGUSON LANDSCAPE CORPORATION

Kenneth Ferguson Pres.
By: Kenneth Ferguson, President

ATTEST:

Peter Hegeman
Peter Hegeman, City Clerk

DRAINAGE DISTRICT NO. 22

Eric Nielsen
By: Eric Nielsen, Mayor

ATTEST:

Peter Hegeman
Peter Hegeman, City Clerk

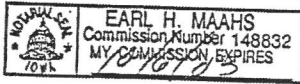
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STATE OF IOWA

COUNTY OF DICKINSON

) ss

On this 27th day of July, 2001, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Eric Nielsen, Mayor of the City of Spirit Lake, Iowa, and Peter Hegeman, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.



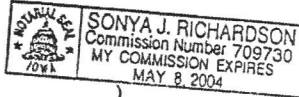
[Signature]
Notary Public in and for said County and State

STATE OF IOWA

COUNTY OF DICKINSON

) ss

On this 3 day of August, 2001, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Kenneth Ferguson, each being to me personally known to be the identical person and officer of Ferguson Landscape Corporation, named in the foregoing instrument, who executed the same under and by virtue of the authority vested in him by said corporation, and for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.



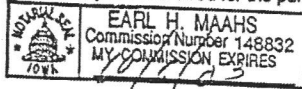
[Signature]
Notary Public in and for said County and State

STATE OF IOWA

COUNTY OF DICKINSON

) ss

On this 27th day of July, 2001, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Eric Nielsen, Mayor of the City of Spirit Lake, Iowa, and Peter Hegeman, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.



[Signature]
Notary Public in and for said County and State

ASSESSOR'S CERTIFICATE

I, Patricia Dodds, Dickinson County Assessor, do hereby certify that a copy of the Ferguson Business Park, Dickinson County, Iowa, has been duly filed in my office this date as required by law.

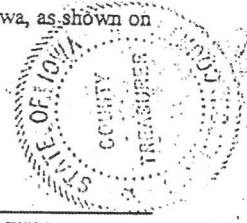


Dated this 25 day of Jan, 2002.

Pat Dodds By A.S.
Patricia Dodds, Dickinson County Assessor

TREASURER'S CERTIFICATE

I, Linda Voss, Dickinson County Treasurer, do hereby certify that there are no unpaid taxes, certified special assessments nor tax liens of record in my office against any of the property platted as Ferguson Business Park, Dickinson County, Iowa, as shown on the Plat attached hereto.

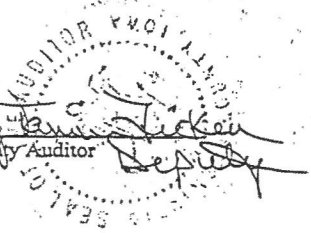


Dated this 25 day of Jan, 2002.

Linda M. Voss
Linda Voss, Dickinson County Treasurer

AUDITOR'S CERTIFICATE AND APPROVAL OF PLAT NAME

I, Nancy Reiman, Dickinson County Auditor, do hereby certify that Plat of Ferguson Business Park is approved as the name for the Plat attached and that a copy of the attached Plat of Ferguson Business Park, Dickinson County, Iowa, has been furnished to the Dickinson County Auditor's Office, and a copy has been filed with the Dickinson County Auditor's Office as required by law. I further state that there are no liens recorded in this office against said real estate.



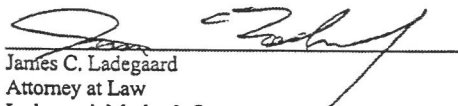
Dated this 25th day of Jan, 2002.

Nancy Reiman by Nancy Reiman
Nancy Reiman, Dickinson County Auditor

ATTORNEY'S ABSTRACT OPINION

I, James C. Ladegaard, of the firm of Ladegaard, Maahs & Owens, 708 Lake Street, Box AK, Spirit Lake, Iowa, pursuant to the provisions of Section 354.11 of the 2002 Code of Iowa hereby certify that I am an attorney at law admitted to practice in the State of Iowa; that I have examined the abstract of title to the real property included in the Plat of Ferguson Business Park, Dickinson County, Iowa, which property is legally described in the Proprietor's Certificate to which this opinion is attached and that I am of the opinion that fee simple title to the above described property is owned and vested in Ferguson Landscape Corp., subject to a Mortgage by Ferguson Landscape Corporation to First Bank and Trust, dated and filed April 14, 1995 in Mortgage Record 127, Page 373.

This examination is based upon an abstract of title containing 31 entries numbered one through 31, inclusive, prepared in accordance with the provisions of Chapter 614.29 through 614.38 of the Code of Iowa, Chapter 11 of the Iowa Land Title Examination Standards and the abstracting standards of the Iowa Land Title Association and last certified by Cornell Abstract Company to January 25, 2002 at 1:40 P.m.


James C. Ladegaard
Attorney at Law
Ladegaard, Maahs & Owens
708 Lake Street, Box AK
Spirit Lake, IA 51360

