

OVERVIEW OF THE CBE RESTRICTIVE COVENANTS

I. INTRODUCTION

A restrictive covenant is a form of binding agreement that limits use of property by prohibiting certain uses. The Declaration of Covenants and Restrictions for the Center for Business and Education (öCBE Covenantsö) clearly limit use of the property and specifically prohibit certain uses of the land within the CBE. For example: residential development and retail establishments such as big boxö retail stores are not allowed on the property. In addition, the CBE Covenants prohibit noxious businesses and have the effect of limiting direct competition of new businesses within the CBE property from competing with existing businesses located in Downtown Yellow Springs. The CBE Covenants also include an Architectural Review Committee (öARCö) to implement aesthetic protections as the property is developed. The ARC considers building design, building placement, landscaping, color schemes, and exterior materials.

Questions often arise in regard to how long restrictive covenants remain in effect. For a restrictive covenant to be binding, the covenants must be recorded to put the public on the notice of the restrictions. If restrictive covenants are properly recorded, any prohibitions on the use of the property are legally binding upon private parties in perpetuity unless otherwise specified.

II. THE PERMITTED USES OF THE LAND UNDER THE CBE COVENANTS.

A. Permitted Uses

CBE Covenants require that all lots on the property must be used only for the following primary purposes:

- Offices
- Commercial
- Medical
- Educational
- Assembly
- Research
- Servicing
- Light industrial
- Warehousing
- Distribution

The Antioch Site alone may also be used for post-secondary educational purposes. Lots on the property may only be used for food services, sales offices, and other retail uses which are incidental to one of the above-listed primary uses. Further, light manufacturing activities must be confined within a building or buildings and must not contribute noise, dust, smoke, fumes, light, toxic emissions or vibrations to the surrounding environment which are incompatible with other uses on the property or present any significant hazards.

III. THE PROHIBITED USES OF LAND UNDER THE CBE COVENANTS.

The CBE covenants provide an extensive list of activities that are prohibited from occurring on any part of the property:

- No residential use other than hotels
- No fast food restaurants

- No gas stations
- No retail use other than incidental to primary use
- No dangerous activity to person or property
- No drive-in theaters
- No auto-repair or painting establishments
- No auto-retail or used auto sales
- No junkyards
- No concrete or asphalt mixing plants
- No dumping
- No refining of oil
- No smelting of ores
- No cemeteries
- No wood or lumber processing
- No penal institutions
- No quarrying or excavations
- No blasting
- No activity that may cause electro-mechanical or electro-magnetic disturbances
- No activity involving disturbance to others because of radiation, air, or water pollution
- No post-secondary education (except Antioch)
- No adult-entertainment or sex stores or drug paraphernalia shops

In addition to the listed prohibitions, the CBE Covenants prohibit any activity not specifically authorized from being conducted on the property. Therefore, no lot on the property may be used for any purpose that is not permitted.

IV. OTHER RESTRICTIONS UNDER THE CBE COVENANTS

1. Exterior Surfaces

The walls of all buildings must be constructed from the ground level to eave height of the building. This height does not include a part of the wall constructed with concrete blocks or cinder blocks.

2. Signs

Signs are generally not permitted on the property unless they conform with the following restrictions and to the zoning restrictions of Yellow Springs.

- Signs visible from the exterior of a building may be lighted, but they may not rotate, blink, or move. Further, lighting for the sign must be provided either from an underground source or by other non-visible means.
- Advertisement signs may only advertise for operating the use conducted on the lot.
- When construction commences on any lot, one [1] construction sign denoting the architects, engineers, contractor, etc. is permitted.

- Signs used by the Declarant in connection with the sale or rental of any property are permissible so long as they conform to zoning ordinances and regulations.
- Special purpose signs for directing traffic or giving instructions or providing identification are also permissible.

3. Parking

Parking spaces must be at least 9 ft. by 19 ft. exclusive of driveways and maneuvering space. The parking lot itself must be directly connected with the street by a paved driveway. The Declaration sets minimum requirements for the number of parking spaces for each lot based on the primary use of the lot in question.

- Lots used for offices: Three [3] spaces for each one thousand [1000] square feet of total office space, excluding restrooms, equipment areas, elevator shafts, and hallways.
- Lots used for research, light manufacturing, and assembly: Two [2] spaces for every three [3] employees, but never less than two [2] spaces for each one thousand [1000] square feet of gross floor area. If there is more than one shift of employees, then the size of the largest shift determines the parking space requirements.
- Lots used for warehouses and all other uses: Parking space requirements and proposals must be approved on a case-by-case basis by the ARC.

Parking is otherwise not permitted on any lot of the property where it would be a violation of local laws and ordinances. Further, where there is conflict between the Declaration's provisions on parking and the restrictions contained in any local ordinance, the more restrictive provision controls.

4. Loading and Storage Areas

Loading and storage areas must either be inside a closed building or at the rear of a building. They are permitted on the side of a building, but only with approval by the ARC and screening of the area by landscaping or other arrangement. Loading and storage areas are not allowed to encroach on any setback area shown on the plat and they may not face any street.

Vehicles may not be repaired outside of any buildings and inoperative vehicles may not stay parked outside of a building for more than five [5] days. No waste materials, supplies, apparatus, finished or semi-finished products may be stored outside unless screened from view.

5. Landscaping

Front yard set-back areas and all unpaved areas not used for parking must be landscaped. The entire area between the curb of the street and the building setback line must be landscaped as well, excluding any portion which has a sidewalk on it.

Weeds and unsightly growth are prohibited on all undeveloped areas of each lot on the property.

Parking areas must be bordered by appropriate landscaping to screen the area from view of adjacent lots or streets.

Any shrubs, trees, or other plants used for screening must be of maturity when first planted that they may be expected to reach the required screening height within three [3] years of planting.

Landscaping must be in well-kept condition and must be maintained so as not to create traffic hazards. Landscaping approved by the ARC must be installed within one hundred and twenty [120] days from the initial date of occupancy or the completion date of the building, whichever is earlier.

6. Trash Collection

Trash may only be deposited in covered sanitary containers screened from view of any adjacent lots and/or the nearest street. Collection containers are not allowed between adjacent streets and the building setback line of any lot.

7. Maintenance

All lots and improvements, occupied or unoccupied, must be maintained in good condition and repair at all time.

8. Telephone and Electrical Service

On-site electrical lines and telephone lines must be underground. Any transformer equipment above ground must be screened from view of any adjacent street or lot.

V. SITE PLAN APPROVAL.

The approval of plans for construction or improvement of a lot is governed by section 4 of the Declaration. In order for construction, alteration, or any type of improvement can be done to any lot on the property, the owner of the lot must submit a complete set of building or installation plans and specifications for the improvement to the Architectural Review Committee (öARCö) for approval. Any changes to plans which are approved and materially affect the building or improvement size must also be submitted to the ARC for review.

Once the plans or proposed changes are submitted to the ARC, it has thirty [30] days after the plans are submitted to approve, reject, or modify the plans. If no decision has been rendered within those thirty [30] days, the plans are deemed to be approved. The ARC will not approve any plans which have the concerned building or improvement located between the boundary line of the lot itself and the setback line established by the zoning code. Further, the ARC cannot unreasonably withhold approval of plans that conform to the ARC's architectural guidelines.

Improvements on any lot must begin within one [1] year of the date of approval under section 4 of the Declaration and they must be finished öwithin a reasonable time after the beginning of construction or installation.ö Temporary structures erected during construction may not remain on any lot after construction is finished.

VI. DURATION OF THE CBE COVENANTS

The covenants and restrictions run with the land until thirty years following, unless they are otherwise amended or terminated prior to that date. On the thirtieth anniversary after the CBE Covenants were recorded, the covenants and restrictions automatically renew for consecutive terms of ten years, unless terminated in the manner set forth in the document.