Legislation Details (With Text)

File #:	53034	**Version:**	1	**Name:**	10234 - Center for Industry & Commerce (CIC) Covenants Amendment
Type:	Resolution			**Status:**	Passed
File created:	8/29/2018			**In control:**	Economic Development Division
On agenda:	9/4/2018			**Final action:**	9/25/2018
Enactment date:	9/28/2018			**Enactment #:**	RES-18-00710

Title: Authorizing the amendment and restatement of the Declaration of Covenants, Conditions and Restrictions for the Center of Industry & Commerce, to revise and update various provisions contained therein.

Sponsors: Samba Baldeh

Indexes:

Code sections:

Attachments: 1. 10234 Resolution Exhibit A.pdf, 2. 10234 Resolution Exhibit B.pdf

Date	Ver.	Action By	Action	Result
9/25/2018	1	COMMON COUNCIL	Adopt	Pass
9/17/2018	1	PLAN COMMISSION	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
9/4/2018	1	COMMON COUNCIL	Refer	Pass
8/29/2018	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes revisions and updates to the Declaration of Covenants, Conditions and Restrictions for the Center of Industry & Commerce (CIC). No City appropriation is required.

Title

Authorizing the amendment and restatement of the Declaration of Covenants, Conditions and Restrictions for the Center of Industry & Commerce, to revise and update various provisions contained therein.

Body

WHEREAS, The Center for Industry & Commerce L.L.C., previously Declarant under the Declaration, executed The Center for Industry & Commerce Declaration of Covenants, Conditions, and Restrictions for the Center for Industry & Commerce and recorded the same with the Dane County Register of Deeds on March 25, 2003 as Document No. 3677132 (the “Declaration”); and

WHEREAS, the Declaration was amended in 2005 by Amendment to the Center for Industry & Commerce Declaration of Covenants, Conditions, and Restrictions recorded on February 23, 2005 with the Dane County Register of Deeds as Document No. 4023951; and

WHEREAS, Article IV of the Declaration establishes a design review board (the “Design Review Board” or “Design Board”); and

WHEREAS, Article X.A. of the Declaration provides that the Declaration may be amended by a written recorded instrument executed by a majority of the Design Review Board and the Declarant, so long as the Declarant continues to hold any interest in the Project described in the Declaration; and

WHEREAS, Article X.F. permits the assignment of rights from the Declarant to another person or entity, and

The Center for Industry & Commerce L.L.C. so assigned its rights as Declarant under the Declaration to the City of Madison (the "City") by recorded document with the Dane County Register of Deeds as Document No. 5007196; and

WHEREAS, the Declaration was further amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded on July 27, 2017 with the Dane County Register of Deeds as Document No. 5344856, as authorized by Resolution No. RES-17-00106, File ID No. 45675 and is attached hereto as Exhibit A; and

WHEREAS, the City of Madison, as Declarant, and the majority of the Design Review Board desire to further amend the Declaration.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute The Center for Industry & Commerce Amended and Restated Declaration of Covenants, Conditions and Restrictions, the key changes of which are as follows:

1. Design Review Board Structure.
   a. Initial Structure. The Design Review Board ("Design Board") shall consist of three (3) members who will be appointed initially as follows:
      (1) Two (2) members appointed by the City, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee;
      (2) One (1) member, whom shall be a Design Professional, appointed by the City, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee;
   b. Ultimate Structure. When fifty-one percent (51%) of the land area within the Project, as the same may be expanded under Article II, is owned by Owners other than the Declarant, the composition of the Design Board will change to:
      (1) Two (2) members elected by Owners holding a majority of the Voting Rights in the Project, and
      (2) One (1) member, whom shall be a Design Professional, appointed by the City, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee.

2. Buildings and Materials.
   a. The following materials may be used for the exterior building walls:
      (1) Brick.
      (2) Stone.
      (3) Glass.
      (4) Combination architectural glass and metal panels (curtain wall systems). Standing seam metal siding on facades facing public streets is prohibited.
      (5) Architectural precast panels (concrete or synthetic products as parts of curtain wall systems), if colored and detailed architecturally.
      (6) Cast-in-place, tilt-up, or structural concrete with integral coloring or texturing, if colored and detailed architecturally.
      (7) Decorative concrete masonry units ("split face" blocks).
      (8) Metal panels, with hidden fasteners, used as a secondary material and comprising no more than fifty percent (50%) of the façade, not including glazing.
      (9) Other uses of metal, copper, or brass as an accent or roofing material only.
      (10) Glass block.
      (11) At the discretion of the Design Board, other materials not listed here.
      (12) All materials permitted under this section shall be of comparable value to the majority of those

other materials used to construct the existing buildings within the Project.

b. The following materials are strictly prohibited:
   (1) Traditional steel or metal-clad buildings, including prefabricated metal buildings.
   (2) Exposed, uncolored, untextured concrete and smooth face concrete block.
   (3) Stucco, EIFS, Dryvit, or the like, except as an accent.

3. Easement for Pedestrian & Bicycle Path. Declarant memorializes its current and future intent, in its capacity as a municipality, to obtain a ten foot (10') wide easement upon each Development Site that is adjacent to the Hoepker Road or Hanson Road public rights-of-way. Said easement upon each applicable Development Site shall run along the lot line parallel to the adjacent public right-of-way and shall be for the purpose of providing a pedestrian and bicycle path. The City of Madison shall be responsible for constructing and maintaining the pedestrian/bicycle path, at its sole cost. The completion of the pedestrian/bicycle path shall be performed in the sole discretion of the City of Madison. Declarant shall, in its sole discretion, determine the appropriate method for memorializing or securing this interest in the absence of recorded easements.

4. Owners' Association Board of Directors. The affairs of the Association shall be governed by a Board of Directors ("Association Board") consisting of three (3) persons. The initial structure of the Association Board shall be comprised of three (3) persons appointed by the Declarant, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee. At such time where fifty-five percent (55%) of the land area within the Project is owned by Owners other than the Declarant, the Association Board shall be comprised of one (1) member elected by Owners holding a majority of the Voting Rights in the Project and two (2) members appointed by the Declarant, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee. At such time where seventy-five percent (75%) of the land area within the Project is owned by Owners other than the Declarant, the Association Board shall be comprised of two (2) members elected by Owners holding a majority of the Voting Rights in the Project and one (1) member appointed by the Declarant, to be appointed by the City's Director of Planning & Community & Economic Development or by his/her designee, unless the Declarant elects to waive its right to appoint an Association Board member, in which event the third member shall also be elected by Owners holding a majority of the Voting Rights in the Project. Within one hundred eighty (180) days of the date that Declarant ceases to own any interest in the Project, the Association shall hold a meeting, and the members shall elect all three (3) directors.

5. Entrance Landscaping. Lots adjacent to the Project entrances may be subject to additional landscaping requirements to emphasize entry into the Project, as depicted on attached Exhibit B.

6. Owners' Association Obligations. The Association shall be responsible for the exclusive management, maintenance, and control of the Drainage Swales within CIC, and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall have easements for access to all of the foregoing areas to the extent necessary to carry out its obligations described in this Declaration. The Association shall be governed in accordance with the Association's articles and bylaws or other governing documents. If no Association exists, then all functions of the Association shall be carried out by the Owners.

7. Duration, Modification, and Termination. The Declaration may be amended by a written recorded instrument executed by a majority of the Association Board (and Declarant, so long as Declarant continues to hold any interest in the Project). Unless amended as provided therein, the Declaration shall run with the land and shall be binding upon all persons claiming an interest in a Development Site for a period of thirty (30) years from the date the Declaration was originally recorded. After the expiration of the initial term of the Declaration, the Declaration (as presently written or as so amended) shall be automatically extended for successive periods of ten (10) years. Declarant shall have the unilateral right, exercisable by executing and recording a document exercising such right, to subject additional lands to this Declaration, in which case the additional lands shall be part of the Project.

8. Variances. The Design Board may grant a variance from any of the prescribed criteria herein, from time to time where such variances will assist in carrying out the intent and spirit of this Declaration. A variance, once granted, does not set a precedent, and is given with the intention of keeping the overall welfare of the Project in mind and following the spirit of the Declaration. Approval of any variance request requires a unanimous affirmative vote by the Design Board. Notwithstanding the foregoing, when a variance is for the proposed use of a building material that is in direct conflict with Article VI.C., and said material comprises twenty-five percent (25%) or more of the proposed building's overall costs, then an affirmative vote by at least sixty-five percent (65%) of the Owners shall also be required to approve the variance.

9. Miscellaneous Changes.

a. In making a determination regarding approval of plan submissions, pursuant to Section V.C., the Design Board shall consider whether or not a proposed development is comparable in design and quality to the existing buildings within the Project.

b. Applicants shall submit all required plans and specifications in electronic format to the Chair of the Design Board.

c. Metal panels, with hidden fasteners, shall be permitted as a secondary building material provided they comprise no more than fifty percent (50%) of the façade, not including glazing.

d. All building materials permitted under Section VI.C.1. shall be of comparable value to the majority of those other materials used to construct the existing buildings within the Project.

e. Traditional steel or metal-clad buildings, including prefabricated metal buildings, shall be strictly prohibited.

f. Any on-street parking within the Project shall comply with all applicable City of Madison ordinances and regulations.

g. Parking areas shall be separated from adjacent roadways by a combination of raised walkways, berms or planting areas. All parking areas shall be appropriately screened in accordance with City of Madison zoning requirements.

h. LED lighting shall be permitted for use in lighting parking areas and truck shipping and receiving areas.

i. Kentucky Coffeetree will replace the Ash tree option for the tree planting requirement.

j. The Declarant shall have the option develop monument and entrance signage for the Project, but is not required to do so.

k. The Notice address for the Owners' Association is as follows:

The Center for Industry & Commerce Owners' Association
P.O. Box 2364
Madison, Wisconsin 53701-2364

BE IT FURTHER RESOLVED, that other non-substantive edits and formatting changes are authorized to be made to the covenants to support the changes contained herein.

BE IT FINALLY RESOLVED, that the Mayor and City Clerk, and authorized representatives on the Design Review Board are hereby authorized to execute any and all documents that may be required to complete this transaction.