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POLK COUNTY, IOWA

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TIMOTHY J. BRIEN
RECORDER

INST # 026069

RECORDING FEE 51.00

AUDITOR FEE _____

Prepared by and Return to: Ed Skinner, Box 367, 204-8th St. S.E., Altoona, IA 50009 (515) 967-4264

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
ELDER BUSINESS PARK, AN OFFICIAL PLAT
IN THE UNINCORPORATED TERRITORY OF POLK COUNTY, IOWA**

STATE OF IOWA)
) ss
POLK COUNTY)

**ARTICLE I
PURPOSE AND DECLARATION**

Section 1.10. Identification. The Declarants, WWJD, L.L.C., a Limited Liability Company, and Terry L. Mickle and Joan M. Mickle, husband and wife, of Des Moines, Polk County, Iowa, are the owners of certain real property (hereinafter the "Land"), described as follows:

Please see Exhibit A attached hereto and by this reference made a part hereof as though fully set out herein,

Said real estate to be platted and known as Elder Business Park.

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

Section 1.20. Objective. In order to establish a general plan for the improvement and development of the Land, the Declarants have elected to impose upon the Land certain mutual restrictions for the benefit of the Declarants and all future owner, lessees and occupants of the Land. This Declaration of Covenants and Restrictions for the Elder Business Park is intended to contribute to the creation and the maintenance of a high quality and aesthetically pleasing business park. The Declaration of Covenants and Restrictions, as presented herein, shall be binding on all present and future owners, lessees and occupants of the Elder Business Park, hereafter referred to as the "Park".

Section 1.30. Declaration. The Land is hereby declared to be subject to this Declaration of Covenants and Restrictions (the "Declaration"). This Declaration shall run with the land and shall insure to the benefit of and be binding on the Declarants, their successors and assigns, including but not limited to all subsequent owners, lessees and occupants of the Land. The Land is now held and shall be developed, improved, conveyed, leased and used subject to and in

accordance with this Declaration, which shall insure to the benefit of and pass with each and every part of the Land and apply to and bind the heirs, assignees and successors in interest of each and every owner of part of the Land. Each owner of any part of the Land, does covenant and agree with the Declarants and their successors and assigns, to use the Land only in accordance with the restrictions herein set forth and to refrain from using the Land in any way inconsistent with or prohibited by this Declaration.

Section 1.40. Enforcement. This Declaration and every covenant, term and provision hereof, shall be enforceable by the Declarants, the Elder Business Park Owners' Association, Inc. (hereinafter identified), and each owner of any part of the Land, all as provided herein.

Section 1.50. Definitions.

Section 1.51. Building Line. An imaginary line parallel to a street right-of-way line, specifying the closest point from the street right-of-way line that a building structure may be located (except for overhangs and stairs).

Section 1.52. Lot. The individual parcels into which the Park is divided, as shown on the final Official Plat was on the _____ day of _____, 2000, filed in Book _____ at Page _____ of the records of the Recorder of Polk County, Iowa. Each lot is considered to be a part, parcel and portion of the land and of the Park itself.

Section 1.53. Sign. Any structure or device, electric or non electric, and all parts thereof, which is erected or used for advertising or identification or on which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, projected, posted, tacked, nailed, pasted or otherwise fastened or affixed.

Section 1.54. Building. Any building, plant, facility, enclosed storage area, structure or other improvement affixed to the Land (except non-elevated parking areas, drives, walks, Signs, lighting and landscaping).

Section 1.55. Owner. Any purchaser, assignee, or equitable or legal title holder of any lot, but not the Declarants, except that the Declarants shall be considered to be an owner with respect to lots owned by the Declarants which Declarants improve with the construction of a building.

Section 1.56. Person. Any individual, corporation, partnership, association, joint venture or other legal entity.

Section 1.57. Street Maintenance for Lots 1, 2, 3, and 4. The owners of Lots 1,2,3, and 4 shall be responsible for the maintenance of the street between the lots. Said maintenance shall be on a square foot basis of the entirety of the four lots.

**ARTICLE II
LAND USE**

Section 2.10. Zoning. The zoning ordinance of the Unincorporated Territory of Polk County, Iowa shall be binding on use of the subject real estate, with the exception of the excluded use as set out hereinafter.

Section 2.20. Excluded Uses. The following land uses shall not be permitted within the Park:

- (a) Residential dwellings;
- (b) Liquor establishments, abortion clinics, taverns, girl shows or juice bars.
- (c) Arcade; game room; massage parlor; any business involving the sale of pornographic materials, or offering services or products intended to give sexual gratification.
- (d) Concrete mixing, concrete products manufacture;
- (e) Vulcanizing, re-treading and recapping of tires;
- (f) Any illegal use;
- (g) Any use which presents an undue hazard of pollution, fire or explosion; or
- (h) Any use which creates hazardous or otherwise unreasonable level of smoke, noise vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions. (What level is "unreasonable" shall be determined with consideration given to the fact that the Land is dedicated for use as a Business Park and is zoned for light manufacturing uses.)

Section 2.30. Waste and Refuse. No waste material or refuse shall be dumped upon or permitted to remain on any property or part of any of the property outside of the buildings constructed thereon.

**ARTICLE III
GENERAL SITE STANDARDS**

Section 3.10. General Site Standards. The general site standards required shall be pursuant to the zoning ordinance of Polk County, Iowa.

Section 3.20. Number of Buildings. Unless the prior written consent of the Declarants is obtained, no more than one building may be erected on any one lot. Notwithstanding the previous sentence, two buildings will be permitted on Lots 1 and 2.

Section 3.30. Setbacks. No building or other improvement (except non-elevated parking areas, drives, walks and signs, lighting, fencing and landscaping), shall be located in the Park nearer to the lot line of any lot, or nearer to the right-of-way line of any street, road or highway, than the minimum setback.

Section 3.40. Building Standards.

Commercial Buildings. All facades on exterior walls of any commercial building located in the designated commercial zoning district in the Park shall be constructed entirely of steel or masonry materials, excluding windows and doors. For the purpose of these Covenants, masonry materials shall be defined as brick, pre-cast decorative concrete, cut stone or similar materials. Building façade materials shall not be non-decorative concrete block. Other materials such as wood, cut glass, or plastic may be used for decorative purposes, but shall not cover more than ten percent (10%) of the surface of any single exterior wall.

Industrial Buildings. Industrial buildings located in the Park shall meet the Uniform Building Code for industrial construction. A minimum of fifty percent (50%) of the façade on any exterior wall facing a local public street, state highway, or interstate shall be composed of steel or masonry materials such as brick, pre-cast decorative concrete, cut stone or similar materials, excluding windows and doors.

Section 3.50. Overhead Doors and Loading Docks. Overhead doors and loading docks that are part of any principal or accessory commercial or industrial building shall not be on any side of a building facing a public street, highway, or interstate. Any freestanding loading dock or ramp shall not be in any yard facing a public street, highway or interstate.

Section 3.60. Fencing. All fences shall be located on individual properties, common or public areas and must be well maintained and attractive. Fencing may be used for security, safety, landscaping, or privacy. Location and style of fencing must at a minimum meet the Polk County, Iowa's Code of Ordinances. No fence shall extend into the front yard of any property.

Section 3.70. Fire Protection. The owner of each lot shall provide fire protection for any building constructed on such lot, in the form of a public fire hydrant installation and/or automatic extinguishing system within such building in accordance with the Municipal Code of Polk County, Iowa in effect at the time of construction of such building.

However, with respect to Lots 1 and 2, it shall be the responsibility of the developer, WWJD, L.L.C., a Iowa Limited Liability Company, to install one or more fire hydrants, with adequate water supply, for said lots in conjunction with its responsibility to provide water service to said lots.

**ARTICLE IV
MAINTENANCE**

Section 4.00. Maintenance.

- (a) The owner of each lot shall keep such lot, and any buildings, improvement and appurtenances thereon, in a clean, safe, neat and sanitary condition, in good repair, and shall comply with all laws, ordinances and regulations pertaining to health and safety regulations. The owner of each such lot shall provide for the

periodic removal of trash and rubbish from the lot. Storage of trash receptacles shall be screened from view from all streets, roads and other lots in the Park and no trash shall be allowed to accumulate outside at any lot.

- (b) During construction, it shall be the responsibility of the owner of each lot to insure that construction 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.
- (c) The owner of each lot shall keep the landscaping on each developed lot weeded and in a healthy and well-manicured condition. The owner of each developed lot shall promptly replace landscaping which becomes unhealthy or unsightly.
- (d) The owner of each lot shall keep the storm sewer and drainage structures used in providing storm water detention for such lot in a state of good repair and function.

Section 4.10. Platting Requirements.

- (a) All existing entrances to Lots 1 and 4 shall be removed. Access to Northeast 66th Avenue is restricted to proposed private access easements area only.
- (b) All mailboxes located in Polk County road right-of-way shall be of the breakaway design.
- (c) It shall be the developer's responsibility to apply for and obtain any storm water discharge permits from the Iowa Department of Natural Resources if said permits are required for this project.
- (d) Any sub-surface drainage facilities that are disturbed must be restored or re-routed by the individual property owners as to their own individual property.
- (e) Should these lots be annexed to the City of Ankeny, the lot owner shall be responsible for installation of sidewalks and street lighting to municipal standards.

**ARTICLE V
LANDSCAPING**

Section 5.10. Landscaping Standards. Landscaping shall be as required by the ordinances of Polk County, Iowa.

At a minimum, all landscaping requirements in the Park shall meet the zoning and site plan requirements set forth in the Polk County, Iowa Zoning Ordinance and other applicable County ordinances.

**ARTICLE VI
SITE GRADING AND DRAINAGE**

Section 6.10. Site Grading Effect on Adjacent lots. Each lot shall be graded such that there is no material storm water runoff onto another lot. This requirement shall not be applicable to Lots 1 and 2.

Section 6.20. Storm Water Detention. The owner of each Lot 1-2-3-4 shall provide on site storm water detention that must be included on the site plan prior to approval.

**ARTICLE VII
SIGNAGE**

Section 7.10. Building Identification Signs. All freestanding and building signs shall, at a minimum, meet the sign ordinance of the Unincorporated Territory of Polk County, Iowa.

**ARTICLE VIII
ENFORCEMENT**

Section 8.10. Abatement and Suit. The Declarants, the Association and every owner of a lot shall have the right to enforce this Declaration and each and every term, provision, covenant and restriction herein contained, and there shall arise from the breach of any such term, provision, covenants and restriction, a cause of action for damages or for enforcement in a court of Equity as a remedy for such breach.

Section 8.20. Deemed to Constitute a Nuisance. The result of every act or omission whereby any term, provision, restriction or covenant herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity shall be applicable against every such result and may be exercised by Declarants or by any owner for whose benefit these restrictions and covenants are made.

Section 8.30. Attorney Fees. In any legal or equitable proceeding for enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and exclusive.

Section 8.40. Inspection. Declarants may from time to time at any reasonable hour or hours, enter and inspect any Land subject to these restrictions to ascertain compliance therewith.

Section 8.50. Failure to Enforce Not a Waiver of Rights. The failure of Declarants or any owners to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction or covenant.

Section 8.60. Rights of Third Parties. Nothing contained in this Declaration, shall be construed so as to impose or create any duty or obligation on the Declarants or any party to this Declaration, to benefit the general public, third parties, or invitees, guests, employees, agents, principals, or licensees of any owner, lessee or occupant of any lot.

**ARTICLE IX
TERM, TERMINATION AND MODIFICATION**

Section 9.10. Term. This Declaration, every provision hereof and every covenant and restriction contained herein shall continue in full force and effect to a period of forty (40) years from the date hereof, unless otherwise specifically provided.

Section 9.20. Termination and Modification. This Declaration, or any provisions hereof or any term, provisions, covenant or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of the Land or any portion thereof, with the written consent of the owners of sixty-five percent (65%) of the Park, based on the number of square feet of the Land owned as compared to the total number of square feet of Land in the Park, provided, however, that: (a) so long as Declarants own at least twenty percent (20%) of the Land in the Park, no such termination, modification, extension or amendment shall be effective without the written approval of Declarants thereto; and, (b) no such termination, modification, extension or amendment shall be effective without the written approval of the Declarants. The Declarants shall not unreasonably withhold or delay such approval. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the office of the Recorder of Polk County, Iowa.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

Section 10.10. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of Land is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in Land.

Section 10:20. Rights of Mortgagees. All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereafter executed upon the Land, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if any portion of Land is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser of such sale, and the successors and assigns of such purchaser, shall hold any and all Land so purchased subject to all of the restrictions, covenants and other provisions of this Declaration.

Section 10.30. Mutuality, Reciprocity and Runs with Land. All restrictions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of Land shall create mutual, equitable servitudes upon each lot in favor of every other lot; and shall create reciprocal rights and obligations between the respective owners of all lots and privity of contract and estate between the grantees of lots, their heirs, successors and assigns.

In addition , all restrictions, covenants and agreements contained herein shall operate as covenants running with the land for the benefit of the Land and shall inure to the benefit of all grantees of the Land, their heirs, successors and assigns, and shall apply to and bind the grantees of any and all lots, their heirs, successors and assigns.

Section 10.40. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way define, limit or describe the scope and intent of this particular paragraphs to which they refer.

Section 10.50. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not effect the validity of the remaining provisions hereof.

Section 10.60. Please note that the Declarants are the titleholders of the entirety of the subject real estate.

Section 10.70. Declarants' Assignment or Disclaimer. Declarants may at anytime assign by written instrument to any owner, or jointly to all owners, or may merely disclaim, his rights of approval or disapproval of matters as described in this Declaration (and his duties and obligations hereunder, if any), and shall thereafter not be called upon for any exercise of such right of approval or disapproval, nor shall he thereafter have any other rights, duties or obligations hereunder as Declarants.

Dated this 13 day of Sept, 2000.

WWJD, L.L.C.

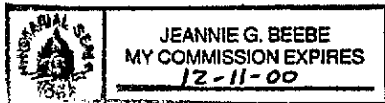
by Harry Elder
Harry Elder

Terry L. Mickle
Terry L. Mickle

Joan M. Mickle
Joan M. Mickle

Subscribed and sworn to before me by the said TERRY L. MICKLE and JOAN M. MICKLE on this 17th day of August 2000.

Jeannie G. Beebe
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA



Subscribed and sworn to before me by the said HARRY ELDER on this 13th day of September 2000.



Linda Bowden

NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF THE NW FRL. 1/4 OF SEC. 1, T79N, R24W OF THE 5TH P.M., POLK COUNTY, IOWA, KNOWN AS PARCEL "C" RECORDED IN BOOK 8181, PAGE 271 AND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE W 1/4 COR. OF SAID SEC. 1; THENCE N 90°00' E 691.45 FT. ALONG THE SOUTH LINE OF THE NW FRACTIONAL QUARTER OF SAID SEC. 1 TO THE POINT OF BEGINNING; THENCE CONTINUING N 90°00' E 745.25 FT. ALONG THE SOUTH LINE OF THE NW FRACTIONAL QUARTER OF SAID SEC. 1 TO THE WESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE N 10°28' E 20.34 FT. ALONG THE SAID WESTERLY RAILROAD RIGHT-OF-WAY; THENCE N 90°00' W 316.05 FT.; THENCE N 0°1 1/2' E 743.43 FT.; THENCE N 89°57 1/2' E 453.14 FT. TO THE WESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE N 10°28' E 570.20 FT. ALONG SAID WESTERLY RAILROAD RIGHT-OF-WAY TO THE NORTH LINE OF THE SOUTH HALF OF THE NW FRACTIONAL QUARTER OF SAID SEC. 1, SAID POINT BEING THE SE COR. OF LOT 5 OF WOODSIDE BUSINESS PARK - PLAT 3 ; THENCE S 89°50' W 1674.83 FT. ALONG THE SAID NORTH LINE OF THE SOUTH HALF OF THE NW FRACTIONAL QUARTER, SAID LINE ALSO BEING THE SOUTH LINE OF WOODSIDE BUSINESS PARK - PLAT ONE TO THE NW COR. OF THE SOUTH HALF OF THE NW FRACTIONAL QUARTER OF SAID SEC. 1, SAID POINT ALSO BEING THE SW COR. OF LOT B, WOODSIDE BUSINESS PARK - PLAT 1; THENCE S 0°17' W 827.60 FT. ALONG THE WEST LINE OF THE NW FRACTIONAL QUARTER OF SAID SEC. 1; THENCE S 90°00' E 689.00 FT.; THENCE S 0°00' W 492.00 FT. TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 32.849 ACRES AND IS SUBJECT TO AND TOGETHER WITH ANY AND ALL EASEMENTS OF RECORD.