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**RESTRICTIVE COVENANTS AND EASEMENTS**

- A. The undersigned ("Owner") is the titleholder of record of the following-described real estate:  
  
Block 1, Lots 1-3; Block 4, Lots 1-2; and Block 5, Lots 1-2; located in Woodland Plaza Addition, Hickman, Lancaster County, Nebraska (the "Property").
- B. The Owner has final platted and subdivided the Property for commercial building sites; and
- C. The Owner desires to establish a uniform plan for the commercial development of the Property.

NOW, THEREFORE, the Owner does hereby create, establish and adopt the following covenants and restrictions against and upon the Property:

1. DEFINITIONS:

- (A) "Association" shall mean the Woodland Plaza Commercial Lot Owners Association.
- (B) "Common Areas shall be any parcels of real property conveyed by the Owner to the Association.
- (C) "Lot" or "Lots" shall mean any of the Lots now or hereafter forming a part of the Property, as the context may require. "Lot Owner" or "Lot Owners" shall mean the record owner of any such Lot or Lots.

2. PERMITTED USE: Except as set forth herein, improvements now or hereafter constructed on the Property shall be used for commercial purposes of the type normally found in a retail or commercial shopping area, including, without limitation, financial institutions, service shops, offices, retail stores, restaurants, daycare facilities, video rental stores, veterinary clinics, or other uses approved by the Association and not in conflict with applicable zoning or use regulations. Nothing in this section shall be deemed to prohibit the operation of business which offers recreation or amusement as an incidental part of its business on the Property which is incidental to the conduct of a permitted use.

3. **GENERAL RESTRICTED USES:** The following uses shall not be permitted on the Property:

- (A) No use which emits an obnoxious noise or odor which can be smelled outside of any building on the Property shall be permitted on any portion of the Property. Provided, however, that this provision shall not prohibit the venting of normal cooking odors which are associated with a restaurant facility.
- (B) No operation primarily used as a storage warehouse operation or an assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation shall be permitted on any portion of the Property. Provided, however, that this provision shall not prohibit the operation of a document/data storage facility on any portion of the Property.
- (C) No mobile home park, trailer court, labor camp, junk yard or stockyard shall be permitted on any portion of the Property. Provided, however, that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, remodeling and/or maintenance of buildings now or hereafter constructed on the shopping center.
- (D) No dumping, disposing, incineration, or reduction of garbage shall be permitted on any portion of the Property. Provided, however, that this provision shall not prohibit the use and operation of garbage compactors and/or garbage cans and/or other temporary garbage storage facilities that are emptied on a regularly scheduled basis at the rear of any building now or hereafter located on the Property.
- (E) No topless/nude shows and no sexually oriented business such as a sexually oriented massage parlor or primarily adult bookstore, or a primarily adult video store, or a primarily adult movie theater or any other establishment which primarily sells, primarily rents or primarily exhibits pornographic material or drug-related paraphernalia (as determined by the Association) shall be permitted on the Property. Provided, however, that this provision shall not prohibit: (i) the operation of a bookstore or video store which carries a general inventory of books or videos and/or other materials not primarily sexually oriented; and (ii) massages in connection with the operation of a beauty salon, health club or athletic facility.
- (F) In the event of a breach of the covenants set forth in this paragraph 3, any Owner of any Lot located on the Property shall have the right to seek any and all remedies afforded by either law or equity including, without limitation, the

rights of injunctive relief.

4. **BUILDINGS:**

- (A) **Design and Construction.** Unless all of the Lot Owners agree to the contrary in writing, structures which are to be constructed on any Lot shall: (i) not exceed forty feet (40') in height above finished grade of any Lot on which such building is located, exclusive of architectural features on the front of any building, and architectural features on the front of any building located on any such Lot shall not exceed forty five feet (45') in height above the finished grade of the Lot on which such building is located; and (ii) not restrict or impede the orderly flow of vehicular traffic from one Lot to another.
- (B) **Materials.** The following standards shall guide the Owner in the review of any plans for any business structures submitted for approval within the Property. These standards shall not be relied upon, interpreted or applied as absolute requirements for plan approval. The Owner shall have the right, in its sole and absolute discretion, to modify the application and interpretation of these standards when exercising its plan approval authority.
- i. **Front Elevation.** Unless all of the Lot Owners agree in writing to the contrary, all structures constructed on a Lot shall have a the front elevation constructed with a minimum of fifty percent (50%) percent brick or stucco finish. Provided, that under no circumstances shall any metal siding or sheeting be used on any outside surface of such structure. Provided, under no circumstances shall any front elevation of such a structure contain any cinder block exterior.
- ii. **Roofing.** Roofing materials shall be equal to or better than an architectural-grade shingle, which provides an appearance of depth such as the "Horizon" shingle.
- iii. **Colors.** All exterior finish materials and colors shall be approved by the Owner in order to establish a general standard and overall development characteristics of the Property.
- (C) **Fire Protection.** Any structure constructed on the Property shall be constructed and operated in such a manner that it will not increase the hazard of fires to the other buildings on the Property, nor cause an increase in the Property damage insurance which a Lot Owner may maintain on any structure.

5. COMMON AREA EASEMENTS:

- (A) Grant of Easements. Each Lot Owner, as grantor, hereby grants to the other Lot Owners, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of each grantee, and to their respective successors and assigns, a nonexclusive easement over, through and around any interior traffic ways for the purpose of access, including construction access and vehicular and pedestrian ingress and egress, loading and unloading of commercial and other vehicles.
- (B) Utility Easements. Each Lot Owner acknowledges and agrees that their respective Lots shall remain subject to the terms and provisions of any utility easements or other easements described in and set forth on the final plat of the Property filed with the City of Hickman.
- (C) Limitations on Use.
- i. Customers. Each Lot Owner shall use reasonable efforts to insure that their respective customers, invitees, licensees, tenants and employees park only on the Lot owned and/or leased by such Lot Owner.
  - ii. General. Any activity on any private parking area other than the primary purpose (which is to provide for parking for the customers, invitees and employees of those businesses conducted on the particular Lot and for the servicing and supplying of such businesses, and the orderly flow of vehicular and pedestrian traffic throughout the Property), shall not be permitted.

6. GRADING: Owner or its assignees shall have the exclusive right to establish all grades and slopes upon all Lots and to fix the grade at which any building or other improvement shall be placed or constructed upon any Lot in conformity with the general plan for the development of the Property. Once such grades, slopes and/or contours have been established by the Owner, they shall not be changed in connection with the construction of any building or other improvement on a Lot without written permission from the Owner, but in no event will any such Lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots. Any improvement placed or constructed upon a Lot by a Lot Owner shall comply with the "Lowest Allowable Building Opening Elevation" set forth on the final plat approving such Lot and shall be constructed in conformance with the Hickman Municipal Code including, but not limited to, its zoning, subdivision and building regulations.

7. EROSION CONTROL. Each Lot Owner shall be responsible for implementing and maintaining adequate erosion control measures on its Lot. The adequacy of erosion measures on a Lot shall be subject to continual review during construction and until completion. Owner shall have

the right to require any Lot Owner to maintain silt fences, straw bales or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalk or into any street, or storm sewer swale. In the event any Lot Owner fails or refuses to perform any required implementation or maintenance of erosion control measures, the Owner after twenty-four hours (24) notice to the Lot Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the Lot Owner who failed to perform their obligations, shall bear interest at the rate of fourteen percent (14%) per annum and shall be a lien upon the Lot assessed.

8. COMPLETION OF CONSTRUCTION. Any improvement placed or constructed upon any Lot shall be completed within 12 months after the commencement of construction. Any and all improvements must be constructed in conformance with the Hickman Municipal Code, including, but not limited to, its zoning, subdivision and building regulations.

9. ANTENNAS. No wiring or antenna for electrical power, telephone, television, radio, or any other use shall be permitted above ground, except underground or within a building. One small satellite dish shall be permitted subject to the requirements of paragraph 11(D).

10. APPROVAL OF PLANS. Plans for any structures to be placed or constructed upon any Lot shall be submitted to Owner for approval prior to construction and shall show the design, size, exterior color, exterior material and plot plan for the building or improvement. One set of plans shall be left on permanent file with the Owner. Construction of the building or improvement shall not be commenced unless and until written approval of the plans has been secured from the Owner. Written approval or disapproval of the plans shall be given by the Owner within thirty (30) days after receipt thereof. Approval of the plans shall not be unreasonably withheld and, upon disapproval, a written statement of the grounds for disapproval shall be provided. The Owner shall have the exclusive right to approve or disapprove the plans if, in the Owner's sole opinion, the plans do not conform to the general standard and overall development characteristics of the Property. The written approval by the Owner of any plans shall be binding upon all Lot Owners. Lot Owners shall obtain written approval from Owner for any modifications to the original plans after Lot Owners receive Owner's initial approval.

11. GENERAL STANDARDS FOR INCIDENTAL IMPROVEMENTS AND STRUCTURES: The following general standards shall be satisfied in the construction and installation of improvements and structures other than the primary business structure. Written approval for other improvements and structures is not required by shall comply with these standards.

- (A) Fencing. Fencing shall not be constructed closer to the street than the front elevation of the primary business structure and shall be constructed with the finished side facing the lot line. No livestock-type fencing material shall be used for construction of a fence within the Property. Any and all fences must comply with all applicable codes or ordinances of the City of Hickman.

- (B) Accessory Structures. Accessory structures such as storage sheds shall be constructed of compatible and similar materials and design with the primary business structure. These structures shall not exceed 120 square feet, be more than 10 feet in height, and shall not be located in the front or side yard setback or within 10 feet of any Lot line.
- (C) Animals. Any animal play area shall be adequately screened from view and shall not be located in the front yard or within 10 feet of any Lot line. Outdoor animal runs and kennels shall not be permitted.
- (D) Satellite Dish. Any satellite dish shall be located and screened so as to be as unobtrusive as is reasonably possible.
- (E) Landscaping. All front, side and rear yard areas shall be sodded or have seeding established within six (6) months after completion of any primary business structure constructed within the Property.
- (F) Opening Elevations. All primary business structure opening elevations shall comply with the minimum elevation established for each individual Lot as required by the City of Hickman, Nebraska.

12. REFUSE SERVICE: The Owner appoints Niederhaus Bros. Refuse as the designated trash hauling service for Woodland Plaza Addition, provided such services are provided at commercially reasonable rates.

13. SNOW REMOVAL: Niederhaus Bros. Refuse shall provide snow removal for all parking lots which may exist or be constructed on the Property, and the bill the applicable Lot Owner for such services, provided such services are provided at commercially reasonable rates.

14. ASSOCIATION. Every person or entity who owns a Lot within the Property shall be a member of Association. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

15. MANAGING AGENT. The Owner or the Association may contract for the performance of any of the Association's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Owner or Association. The fee charged by the Managing Agent shall be a common expense of the members.

16. MEMBERSHIP. The Association shall have two classes of membership:

Class A membership shall include all members of the Association except the Owner and any successor in interest. Each Class A member of the Association shall be

entitled to all the rights of membership and to one vote for each Lot.

Class B membership shall include only the Owner and any successor in interest. The Class B member shall be entitled to seven votes for each Lot. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.

17. CONVEYANCE OF COMMONS. Owner shall determine any areas to designate as commons areas within the Property (the "Commons"). Owner shall convey the Commons, if any, to the Association, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the town of Hickman within one year after the conversion of Class B membership to Class A membership.

18. USE OF COMMONS. Each member of the Association shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Association and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership. No member of the Association shall have a right to use the Commons for commercial gain or business purposes.

19. RIGHTS IN COMMONS. The rights and easements of the members of the Association shall be subject to:

- (A) The right of the Association to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any recreational facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed mortgage is contained in the notice of the special meeting.
- (B) The right of the Association to take any steps reasonably necessary to protect the Commons against foreclosure.
- (C) The right of the Association to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed 30 days for any infraction of the published rules and regulations governing the use of the facilities.

- (D) The right of the Association to dedicate or convey all or any part of the Commons to any public entity.

20. ASSOCIATION RESPONSIBILITIES The Association covenants and each member of the Association, by acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons to the extent not otherwise provided for by these Restrictive Covenants, as well as maintaining public areas within the Property and all roadways other than those on a specific Lot or otherwise maintained by Hickman or Lancaster County, which Restrictive Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons.

21. LIEN DUES AND ASSESSMENTS. The lien of any dues or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the lot against which the assessment is levied.

22. ANNUAL ASSESSMENTS AND LIENS. Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of members affected and entitled to vote, at a regular meeting of the members or at a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting.

The members shall pay annual dues and special assessments to the Association or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any structure. The amount of annual dues shall be based upon an estimate of the Association's costs for administration, maintenance and improvement of the Commons and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Common's operating costs may be presented to the members of the Association and the members shall pay any excess charge to the Association within thirty (30) days of the statement.

- (A) Budgets. The Association or Managing Agent may prepare, and make available to each member a pro forma operating statement (budget) containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Association currently available for replacement or major repair of the Commons and other public areas and roadways, in or surrounding the Property other than those maintained by Hickman or Lancaster County or which exist on a lot (the "Roads"), and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Commons and the Roads; and (4) a general statement setting forth the procedures used by the Association in the calculation and



establishment of reserves to defray the costs of repair, replacement or additions to major components of the Commons and the Roads.

- (B) Additional Charges. In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association or Managing Agent may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but not be limited to, the following:
- i. Attorney's Fees. Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by suit or otherwise;
  - ii. Late Charges. A late charge in an amount to be fixed by the Association to compensate the Association for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any "grace" period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater;
  - iii. Costs of Suit. Costs of suit and court costs incurred as allowed by the court;
  - iv. Filing Fees. Costs of filing notice of lien in the Office of the Register of Deeds;
  - v. Interest. Interest on all dues and assessments at the rate of 14% per annum, commencing thirty (30) days after the assessment becomes due; and
  - vi. Other. Any other costs that the Association may incur in the process of collecting delinquent dues and assessments.
- C. Lien. The dues and assessments shall be the personal obligation of the member who is the Lot Owner assessed at the time of the assessment and when shown of record shall be a lien upon the lot assessed.

- D. Fines. The Association may create a schedule of fines for violation of Association rules and regulations which fine shall be treated and billed as a special assessment to the offending member's Lot.

23. MISCELLANEOUS:

- (A) The Owner may, at any time, add contiguous similarly developed real estate to the Property. Such additions shall be made by the Owner's recordation of an addendum adding the legal description of such additional real estate to the definition of "Property" contained in these Restrictive Covenants at the Register of Deeds, Lancaster County, Nebraska, thereby subjecting the additional real estate to the covenants and restrictions of these Restrictive Covenants.
- (B) Woodland Plaza, LLC shall have the power to assign any or all of its rights as Owner in these Protective Covenants to a successor or assign at such time as the Owner deems appropriate. Woodland Plaza, LLC, or its successor or assign, may terminate its status as Owner under these Restrictive Covenants in its entirety, at any time, by filing a Notice of Termination of Status as Owner.
- (C) These covenants and restrictions shall run with the Property and shall be binding upon and enforceable by the Owner and any Lot Owner and their respective heirs, personal representatives, successors and assigns for a period of twenty-five (25) years from and after the date of recordation of these covenants and restrictions with the Register of Deeds of Lancaster County, Nebraska, and shall be automatically extended for successive periods of ten (10) years thereafter.
- (D) The enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions hereof. Such proceedings may be to restrain such violation or to recover damages or to enforce the payment of any assessment or any lien or obligation created hereby. If any action is brought in any court to enforce the terms or provisions of any of these covenants, or to collect any unpaid assessment against any Lot, then if the person instituting such proceeding is successful, that person shall also be entitled to an award of all costs and fees (including reasonable attorneys' fees) incurred in connection with such proceeding.
- (E) Any instrument amending, modifying, abrogating or canceling these Restrictive Covenants must be recorded before it shall be effective.

(F) The invalidation of any one of the covenants and restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

<sup>his</sup> IN WITNESS WHEREOF, the undersigned Scott Niederhaus, Manager have set their hand and seal this 6<sup>th</sup> day of April, 2007.

WOODLAND PLAZA, LLC

By: Scott Niederhaus  
Scott Niederhaus, its Manager

STATE OF NEBRASKA            )  
  )ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me on this 6<sup>th</sup> day of April, 2007 by Scott Niederhaus, Manager of Woodland Plaza, LLC, a Nebraska limited liability company.



Britt J. Ehlers  
Notary Public

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Please return to:

Britt J. Ehlers  
REMBOLT LUDTKE LLP  
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