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REGISTER OF DEEDS

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**Declaration of Protective Covenants and Restrictions  
for the East Metro Business Park**

001280

Return to:  
Kurtis D. Welton  
Welton Properties, LLC  
P.O. Box 44580  
Madison, WI 53744-4580

By this instrument, Welton Properties, LLC, a Wisconsin limited liability company (herein the "Developer"), does hereby encumber the lands herein described with Protective Covenants and Deed Restrictions in order to assure that the East Metro Business Park becomes and remains an attractive place to do business, as hereinafter provided.

**Declaration of Protective Covenants and Restrictions for the  
East Metro Business Park**

This Declaration, made this 20<sup>th</sup> day of October, 1998, by Welton Properties, L.L.C., its successors in interest or assigns (the "Developer").

**WITNESSETH**

**Whereas**, the Developer now owns certain lands in the Town of Burke, Dane County, State of Wisconsin, described as those lands within the East Metro Business Park Plat recorded in Volume 57-098B of Plats on Page 381, Document Number 2981803, (the "Development"); and

**Whereas**, the Development has been zoned C-2 and M-1 Commercial and Manufacturing District pursuant to the Dane County Code of Ordinances subject to certain use restrictions which are

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described in Document Number 2812975 recorded at the Dane County Register of Deeds office on November 11, 1996 (the "Zoning Restrictions"); and

**Whereas**, the Developer has subdivided the Development into Lots, which subdivision is now known as "East Metro Business Park"; and

**Whereas**, the Developer desires to subject the Development to the conditions, restrictions, covenants and reservations set forth below, which shall encumber the Development of each portion of the Development identified as a lot on a recorded Plat, specifically excluding any outlots (the "Lot" or "Lots") thereof, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

**Now, Therefore**, Developer declares that the Development and each Lot thereof shall be developed, used, held, sold, and conveyed subject to the conditions, restrictions, covenants and reservations set forth below, which shall inure to the benefit of, and encumber the Development and each Lot thereof, and run with the land, and shall bind the successors in interest, any owner thereof, and the owner of any interest therein.

#### **Article I - Statement of Purpose**

The General Purpose of this Declaration is to help assure that the Development will become and remain an attractive place to do business; to insure the most appropriate improvement of each Lot; to guard against the erection thereon of poorly designed or proportioned structures; and to promote and maintain the highest and best uses of the lands commensurate with the zoning and use classifications and demographics of this Development.

#### **Article II - Government Restrictions**

This Development is already under the control of existing zoning and use restrictions imposed by the Town of Burke and Dane County; specifically the classifications of C-2 and M-1 with restrictions (see Exhibit B); and the Developer desires that these existing zoning and use restrictions control, in large part, the nature and use of the lands within the Development. So, the Developer hereby declares that the Government Restrictions shall constitute covenants running with the Development and shall bind the current owners, their successors in interest, any owner thereof, and the owner of any interest therein. Furthermore, these Government Restrictions shall be enforceable at law or equity against any party who has, or acquires, an interest in the Development, by any of the parties who are named below as grantees, promisees, or beneficiaries with enforcement rights hereunder:

- a) - **Wisconsin D.O.T.** The State of Wisconsin Department of Transportation, provided that the Development is still deed restricted for their approval at the time the enforcement action is commenced; and
- b) - **Dane County.** The government of Dane County, Wisconsin, provided that the Development is under the jurisdiction of zoning ordinances of Dane County at the time the enforcement action is commenced; and
- c) - **Burke.** The Town Government of the Town of Burke, Dane County, Wisconsin, provided that the Development is under the jurisdiction of the Town of Burke at the time the enforcement action is commenced; and
- d) - **Other Lot Owners.** Each of the Owners of the Lots in the Development.

The zoning restrictions may be amended, altered, or terminated in accordance with the Dane County Statutes pertaining to such matters at any time by the Developer. If changes by others are desired then all persons or business organizations having the power to convey the fee simple title to a given Lot (the "Owners") must agree to the Amendment, Alteration, or Termination Petition, as the case may be. If the Owners of not fewer than 75% of the number of Lots, consent, in writing, to filing such a Petition with the Dane County Clerk, the execution of any such Petition by not fewer than 75% of the Lot Owners shall be deemed to be consented to and executed by all the Owners of the Lots. For as long as the Developer retains title to, or any interest in any of the Lots, a Petition may not be filed with the Dane County Clerk unless the Developer has consented, in writing, to such filing.

### Article III - Additional Covenants and Restrictions

The Ownership, use and development of the Lots, and construction of all improvements thereon, shall be subject to the following conditions, covenants, reservations, and restrictions:

- a) - **Setback Requirements.** The following setback requirements shall apply to the Lots:
  - i) - Building setbacks shall be in accordance with the Dane County Code of Ordinances, except as modified herein;
  - ii) - The site plan must provide vehicular access along at least one side of the building to the rear yard, unless the rear yard abuts a public street or alleyway with access therefrom;

- iii) - All parking lots and driveways shall be constructed of asphalt or concrete;
- iv) - Rubbish containers and recycling bins shall be in enclosures designed and constructed in a manner compatible with the exterior of buildings and other structures on the Lot;
- v) - Construction of any structures or other improvements on a Lot, once commenced, shall be diligently pursued to the final completion, and no delays in construction longer than thirty (30) days shall be allowed, subject to delays occasioned by acts of God, weather, seasonal considerations, casualty, war, civil disturbance, shortage of materials, strike, or other reason not within the control of the Lot Owner;
- vi) - All areas of Lots not improved shall be graded and seeded in grass; provided, however, that the foregoing requirement shall not apply to Lots held by the Developer for resale or other development.

**b) - Lot Coverage.** The sum of the total number of square feet of the main floor (ground elevation floor) of buildings, other structures (including all stormwater retention and detention structures, basins, and ponds - but excluding ditches) plus the total number of square feet of parking lots shall not exceed 95% of the total number of square feet constituting the Lot.

**c) - Developer Approval.** For as long as the Developer has title to or any interest in any Lot, no improvements of any kind or nature, including, but not limited to, buildings, outbuildings, parking lots, walls, landscaping or fences, shall be constructed or erected upon a Lot, and no exterior alterations shall be made to any of the improvements unless, and until complete plans and specifications shall have been submitted to and approved by the Developer, or its agent appointed for such approvals, in writing. The Developer shall grant or deny, with reasons, their approval or denial within thirty (30) days after receipt of a complete set of plans and specification for the proposed improvement. If the Developer fails to grant or deny their approval within the thirty (30) day period said approval shall be deemed to be denied. If their approval is granted said approval shall not be construed or interpreted to mean that the plans, specifications, and drawings (including site plans, and architects or contractors notes), and any construction in accordance therewith, is in compliance with any applicable building codes, ordinances, regulations, setback requirements or any other statute, rule,

regulation or law applicable thereto. The Lot owner shall be solely and exclusively responsible for determining and insuring such compliance and holds the Developer harmless with regard thereto. The thirty (30) day period shall not begin until a complete set of plans and specifications shall have been received by the Developer to review. In order to be considered complete the plans shall show, at a minimum;

- i) - Construction details of all buildings, fences, walls, parking lots, outbuildings and other improvements;
- ii) - Proposed elevations of any structure, including colors and building materials to be used;
- iii) - A detailed site plan showing the location of all improvements and the proposed grades,
- iv) - Construction details and site plans for all stormwater detention and retention structures, basins, ditches, and ponds,
- v) - Such other materials and plans as the Developer may deem necessary in order to render their decision.

**d) - Developer Rejection.** The Developer shall have the right to reject any plans and specifications which, in the judgement and sole opinion of the Developer:

- i) - are not in conformance with any of the covenants or restrictions in this Declaration;
- ii) - are not desirable for aesthetic reasons;
- iii) - are not in conformity with the general purposes of this Declaration; or
- iv) - for any reason lack merit or are objectionable as business park neighbors.

#### **Article IV - Miscellaneous Provisions**

These covenants and restrictions, their execution and recording, and the implementation of their provisions shall be further governed by the following:

- a) - **Amendment by Owners.** These Covenants and Restrictions may be amended at any time by an instrument duly executed and in recordable form by at least 75% of the Owners of the Lots in this Development. For as long as the Developer retains title to, or any interest in, any Lot in the Development, no such amendment may be executed unless approved by the Developer as to form and content. Developer's approval may be withheld at its sole, absolute and unrestricted discretion. This paragraph shall not apply to the Government Restrictions set forth in Article II above.
- b) - **Severability.** Invalidation of any one of these covenants by judgement or court order shall in no way affect any other provisions, which other provisions shall remain in full force and effect.
- c) - **Nonforfeiture.** Any violation of these restrictions shall not result in a forfeiture or reversion of title to any Lot in the Development.
- d) - **Additions to Existing Property.** The Developer, its successors or assigns, shall have the right, but not the obligation, to bring within and subject to this Declaration, at such times and such stages as Developer in its sole discretion shall determine, additional lands that are contiguous to the Development, by executing and recording with the Register of Deeds of Dane County amended or supplemental declarations of covenants and restrictions with respect to the additional property. Such additional lands shall, upon the recording of such amended or supplemental declarations, be deemed to be a part of this Development. Under no circumstances shall this Declaration or any amended or supplemental declaration bind the Developer, its successors or assigns, to make any additions (except as specifically agreed therein).
- e) - **Attorney's Fees.** If any suit of action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and attorney's fees from the other party.
- f) - **Duration of Covenants.** These Covenants shall continue and remain in full force and effect at all times with respect to all property, and each party thereof, now or hereafter made subject thereto (subject however to the right to make Amendments hereto), until January 1, 2020. However, if, within one (1) year prior to January 1, 2020, there shall be recorded an instrument directing the termination of these Covenants signed by owners of not less than 75% of the Lots then subject to these Covenants, as in effect immediately prior to the expiration date, they shall be continued automatically for an additional period of twenty (20) years and thereafter for successive periods of twenty (20) years unless within one (1) year prior

to the expiration of any such period, the Covenants are terminated as set forth herein.

IN WITNESS WHEREOF, the Developer has caused its duly authorized members to execute these Covenants and Restrictions this 20<sup>th</sup> day of October, 1998.

Welton Properties, L.L.C., the Developer

By: *H. O. Well*

By: KURTIS D. WELTON

STATE OF WISCONSIN    )  
  ) SS.  
COUNTY OF DANE        )

Personally came before me this 20 day of October, 1998. Welton Properties, L.L.C., the Developer, by its duly authorized members, to me known to be the persons who executed this instrument and acknowledged the same.

*Marge J. Gundersen*  
Notary Public

Dane County, Wisconsin

My Commission ~~(is)~~ (expires) 11-7-99

**Declaration of Covenants  
and Restrictions**

Document Number

Title of Document

Record this document with the Register of Deeds

Name and Return Address:

Attorney Michelle A. Behnke  
222 N. Midvale Blvd., Suite 17  
Madison, WI 53705

See Attached

(Parcel Identification Number)

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR EAST METRO BUSINESS PARK**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS**, is made this 13 day of July, 2006 by Welton Properties, LLC, a Wisconsin limited liability company ("Owner").

**WHEREAS**, the Owner currently owns certain real estate in the Town of Burke, Dane County, Wisconsin more fully described on the attached Exhibit A (the "Property"); and

**WHEREAS**, the Owner wishes to provide for development and use of such Property in a beneficial and harmonious manner;

**NOW THEREFORE**, the Owner does hereby grant, declare and impose the following covenants and restrictions on all of the real estate described on Exhibit A.

**1. Purpose.** The purpose of these Covenants and Restrictions is to ensure the harmonious development of the Property. These Covenants and Restrictions shall supplement any previously recorded covenants and restrictions.

**2. Land Use Restrictions.** None of the uses set forth below shall be permitted on any parcel within the Property without the written consent of the then current owner of every parcel contained within the described Property:

- a. amusement park (permanent or temporary) or amusement arcades
- b. animal hospital, kennel or boarding establishment
- c. feed mixing and grinding plants
- d. animal slaughtering/processing
- e. shell egg business (candling, cartoning, or distributing)
- f. taverns/bars
- g. motor vehicle salvage operation
- h. massage therapy
- i. adult entertainment establishment (including, but not limited to retail, live entertainment, video sale/rental)
- j. brew pubs
- k. asphalt and concrete batching or ready mix plants
- l. junk/salvage yard

**3. Term.** This Declaration of Covenants and Restrictions shall run perpetually with the land described herein and shall be binding upon all persons/entities having an interest in the Property or any parcel within the Property. This Declaration of Covenants and Restrictions or any part hereof may not be cancelled, released or amended unless a written Amendment, in recordable form, has been signed by the then owner of each and every parcel within the described Property.



