

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
WESTGATE BUSINESS PARK PLAT 2**

THIS DECLARATION is made on this 27th day of October, 2000, by Eastpark Development, L.L.C., an Iowa limited liability company (hereinafter referred to as "Declarant"), and relates to property more legally described as follows:

Lots 1 - 23 in WESTGATE BUSINESS PARK PLAT 2, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa (hereinafter referred to as the "Property" or "Westgate Business Park").

1.10 Declaration. Declarant hereby declares that the Property shall be subject to the terms of this Declaration of Covenants and Restrictions (the "Declaration"). This Declaration shall run with the land and shall inure to the benefit of, and be binding upon the Declarant, its successors and assigns, which shall include, but shall not be limited to, all subsequent owners, lessees and occupants of the Property, who hereby covenant and agree to use the Property only in accordance with this Declaration refraining from making any use of the Property in any way inconsistent with or prohibited by this Declaration.

2.10 Zoning. No part of the Property shall be used for any purpose other than the purposes permitted by the M-1 or M-1A Classifications as set forth in the Zoning Ordinance of the City of Waukee, Iowa, as it may be amended from time to time, except as provided herein:

(a) Excluded Uses. The following uses are specifically excluded on the Property, whether or not they are presently or would potentially in the future be allowed within the M-1 or M-1A Classification:

- (1) Residential dwellings;
- (2) Contractor's equipment storage yard or plant, or rental of equipment commonly used by contractors, storage and sale of livestock, or storage for over-the-road equipment, except that outside yards shall be permitted when the same are incidental to a permitted principal use, but only when such outside storage yards are screened as provided in 3.10, below;
- (3) Concrete mixing or concrete products manufacture;

- (4) Truck terminal;
- (5) Vulcanizing, retreading or recapping of tires;
- (6) Lounge or bar (except when the same is legitimately a part of a restaurant), adult entertainment businesses, dance hall, arcade, game room, massage parlor, any business involving the sale of pornographic materials, or offering services or products intended to give sexual gratification;
- (8) Any illegal use;
- (9) Any use which presents an undue hazard of pollution, fire or explosion [this provision shall not be construed to prohibit the use of chemicals in processing or manufacturing (i) does not otherwise violate any provision of this Declaration; (ii) complies with the currently adopted Uniform Building Code and Uniform Fire Code; and, (iii) complies with all other applicable of statutes, regulations and ordinances of the City of Waukee, State of Iowa and federal government (and all agencies of each). By way of example and not by way of limitation, industrial sterilization and fumigation for treatment of spices and alcohol extraction for the manufacture of extracts shall not prohibited when such used comply with the foregoing subparagraphs (i) (ii) (iii) and all appropriate industry standards]; and
- (10) Any use which creates hazardous or otherwise unreasonable level of smoke, noise, vibration, 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 Property is dedicated for use as a Business Park and is zoned for light manufacturing uses).

2.20 Lot Size. The Lot sizes shall be as shown in the Official Plat of WESTGATE BUSINESS PARK PLAT 2, and no Lot shall be further divided or subdivided without written permission from the Declarant, which approval shall not be unreasonably withheld or delayed.

2.30 Number of Buildings. Unless prior written consent of the Declarant is obtained, no more than one Building may be erected on any one Lot.

3.10 Outdoor Storage. Except for equipment intended for over-the-road use or rail use, all personal property in Westgate Business Park, including, but not limited to, equipment, supplies, materials, inventory, waste materials, industrial by-products, salvage or reclaimed materials, shall be located either in a Building or in a screened, privacy fenced or densely landscaped area, which efficiently prevents visibility of such personal property from all adjoining property lines and street and highway right-of-way lines. No equipment intended for over-the-road use, shall be stored or parked on a regular or continuing basis in Westgate Business Park, if such

equipment is physically damaged, rusted or otherwise ill kept. No repair, cleaning, painting or maintenance of any over-the-road or other equipment will be permitted in Westgate Business Park, except inside of a Building. Provided, however, cleaning of over-the-road equipment with portable cleaning equipment shall be permitted in areas on a Lot which Declarant determines, in its sole discretion, are adequately screened. Said cleaning equipment, when not in use, shall be stored inside a Building. Excluded uses include:

- (a) Outside storage of equipment of materials unless such storage area is enclosed by chain link fence, or other material approved in writing by Declarant, of a minimum of eight (8) foot height which fence shall be covered with woven opaque screening or other acceptable equivalent screening for the entire width and height of the fencing. All other storage of equipment and/or materials shall be interior storage;
- (b) Fencing shall be considered to be an Improvement for which approval must be given by the Declarant, as provided in 4.10, below. Fence materials, color, height, and other specifications must be set forth on the construction plans and specifications submitted to the Declarant pursuant to 4.10;
- (c) No semi-tractor cabs and semi-tractor trailers shall be stored or parked on the Property for a period exceeding twenty-four (24) consecutive hours and for no more than five (5) such consecutive twenty-four (24) hour periods within any calendar month. No repair, cleaning, painting or maintenance of any semi-tractor cabs, semi-tractor trailers or other equipment shall take place except inside of any building, unless adequate screening is in place as described above, regarding any outside storage area where maintenance may then be performed;

4.10 Improvement Standards. No Buildings, landscaping, other exterior construction or other exterior improvements to any Lot or changes or modifications to any of the foregoing (collectively the "Proposed Improvements") shall be permitted without first submitting complete and detailed construction plans and specifications for such Proposed Improvements to the Declarant and receiving written approval for such plans and specifications from the Declarant. Upon receipt of such written approval, the Proposed Improvements may be constructed, but only in strict compliance with the approved plans and specifications. Such approval shall not be unreasonably withheld or delayed. Such approval may be withheld in the sole discretion of the Declarant, for any reason, including, but not limited to the reason that the Declarant believes that the Proposed Improvements, are inconsistent with the objective of maintaining Westgate Business Park as a high quality and aesthetically pleasing business park.

Although not intended to be exclusive or comprehensive standards, the following criteria shall apply to all Improvements:

- (a) Buildings located on all Lots, except Lots 1, 2 and 3 shall be constructed predominantly with the following exterior wall materials:

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- (1) Precast concrete;
- (2) Brick;
- (3) Split face, ornamental or decorated concrete block;
- (4) Dryvit or stucco;
- (5) Ornamental or decorated poured concrete;
- (6) Glass;
- (7) Alumabond panels; or
- (8) Such other quality materials as Declarant may from time to time approve.
- (9) Lots 1, 2, and 3 shall use the above materials on all sides of a building with street frontage.

(b) Sites shall be designed so as to accommodate within the boundaries of the Lot, truck turn around, truck dock area maneuvering, and the docking, loading, and unloading of trucks.

(c) Except for retail or hotel/motel uses, or where otherwise not reasonably practical, automobile parking areas shall be set back from the front of Buildings at least twenty (20) feet.

(d) Truck dock doors shall not face any street within Westgate Business Park, unless specifically approved in writing by Declarant as a part of Declarant's review of Proposed Improvements described above.

(e) All automobile parking areas and primary automobile access driveways shall have raised concrete curbs (at least six (6) inches above the level of the adjacent parking area or driveway), except where curbs are omitted to facilitate future expansion of automobile access driveways.

(f) All exterior Building and site lighting shall use halogen bulbs (orange cast) and shall be with other lighting throughout Westgate Business Park, given the various occupant uses and needs, and the various lighting applications.

(g) Such screening for rooftop-mounted equipment as deems in, its sole discretion, to be necessary, given the height of the particular Building, location of the equipment on the roof, the height and appearance of the equipment and the practicability and cost of such screening.

5.10 Setback. All Lots shall be subject to a thirty (30) foot front yard setback from the public right-of-way. No improvements may be constructed, except parking, within the setback areas.

6.10 Signage. Each Lot Owner shall be entitled to such signage as may be allowed from time to time by the Zoning and Building Ordinances of the City of Waukee, Iowa.

6.20 Building Identification Signs. No sign shall be erected or maintained in Westgate Business Park except in conformity with the following:

- (a) Signs visible from the exterior of any Building may be lighted, but no signs or any other contrivance may be devised or constructed so as to rotate, gyrate, blink, flash, or move in any animated fashion.
- (b) Signs shall be restricted to advertising only the firm, person, company, corporation or other entity using the Lot.
- (c) Each sign shall be either a: (i) building mounted sign, (ii) ground sign, or (iii) pole sign. No signs painted directly on any Building shall be permitted.

7.10 Lot Divisions. No platted Lot within the Property may be subdivided at any time for any purpose by anyone other than the Declarant without the Declarant's express written permission until such times as Declarant is no longer the legal or equitable Owner of any Lot within the Property including, but not limited to, any real estate subsequently added to the terms of this Declaration as is hereinafter set forth.

8.10 Architectural and Plan Review. All proposed improvements or additions to be constructed on the Property, whether they are initial improvements or additions or improvements or additions constructed after initial construction has taken place on the Property, shall be subject to satisfactory review and approval by the Declarant prior to initiation of construction. Such approval shall be in the sole discretion of the Declarant. No buildings, landscapings, exterior constructions or improvements on any Lot, or changes or modifications in any of the foregoing shall be permitted without first submitting complete and detailed construction plans and specification for such improvements to the Declarant and receiving written approval for such improvements. If the Declarant has not responded to the submittal of any plans and specifications within twenty (20) calendar days of their submittal they shall be deemed to have been approved.

9.10 Lot Maintenance. The Owner of each Lot shall keep such Lot, as well as the improvements and landscaping thereon, in a clean, safe, neat and satisfactory condition at all times and in good repair and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Owner shall provide for the periodic removal of trash and rubbish from each Lot with all trash receptacles being screened from view from all streets and other Lots in

Westgate Business Park and no trash shall be allowed to accumulate anywhere in Westgate Business Park. During construction for any improvements or landscaping, each Owner shall insure that the construction site is kept reasonably free of unsightly accumulations of rubbish and scrap materials and that all construction materials, trailers, shacks, buildings and the like are kept in a neat and orderly fashion.

(a) The Owner of each Lot shall keep the landscaping on each such Lot, weeded and in a healthy and well-manicured condition. The Owner of each Lot shall promptly replace landscaping which becomes unhealthy or unsightly.

(b) 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.

10.10 Parking Requirements. No parking shall be allowed on any streets located within the Property in order to allow for the free flow of traffic at all times. Each Lot Owner shall insure that all of its vehicles are parked within the Lot boundaries in order not to inhibit any traffic flow. Each Owner of any Lot shall at all times provide on that Lot adequate parking to accommodate all parking needs for that Lot.

11.10 Garbage Storage. All garbage dumpsters or other similar containers for the storage of garbage and trash shall be enclosed on all sides. Such storage need not be enclosed on top.

12.10 Driveway. All driveways from the public right-of-way located on each Lot shall be paved with portland cement or asphaltic concrete. Under no circumstances shall gravel or loose rock be used on any driveways. Gravel or loose rock may be used, however, in any enclosed storage area as described in 3.10 (a) open space, so long as it is dust free and kept in good repair. Declarant shall have complete discretion on approval of the use of rock or gravel and the maintenance thereof.

13.10 Open Space/Landscaping. As approved by the City of Waukee, the total land area devoted to open space and landscaping shall not be less than ten percent (10%) of the gross land area included in the Lot. Such open space shall be maintained as grass and landscaped area and shall not include access driveways, parking areas, structures or buildings or their improvements, except ornamental structures included as part of the landscaping theme. All unpaved areas of each Lot, including, but not limited to, front, side and rear setback areas shall be landscaped by the Owner as provided herein. Landscaping must be completed prior to the occupancy of the Building, except when weather makes compliance not reasonably possible, in which case, the landscaping shall be completed as soon as thereafter weather permits. No landscaping of any Lot shall be permitted without first submitting a complete and detailed landscaping plan to the Declarant and receiving written approval for such plan from the Declarant, as Proposed Improvements, pursuant to 4.10, above. The landscaping shall be carried out in strict compliance with the approved landscaping plan. Approval of the landscaping plan shall not be unreasonably withheld or delayed. Approval may be withheld in the sole discretion of the Declarant, for any reason, including, but not limited to the reason that the Declarant believes that the landscaping as

proposed, is inconsistent with the objective of maintaining Westgate Business Park as a high quality and aesthetically pleasing business park. Minimum standards for landscaping, shall require that:

- (a) All unpaved areas shall be landscaped with a combination of trees, ground cover and shrubbery.
- (b) Unless written consent of the Declarant is given, undeveloped areas of Lots held for expansion, shall be seeded or sodded.
- (c) Truck parking areas, permitted incidental outside storage yards (3.10) and trash receptacles, shall be well screened.
- (d) Landscaping quality and density shall meet all requirements of the applicable ordinances of the City of Waukee, Iowa.

14.10 Fence. An exterior security fence around the perimeter of any Lot shall be permissible.

15.10 Additional Property. The Declarant shall have the right, at any time, to add additional properties to the terms of this Declaration as may be determined from time to time by the Declarant. Such additions may be added by the filing of an amendment referencing this Declaration and describing the additional properties being subjected to the terms of the Declaration. Any such amendment may be filed by the Declarant without the consent or joinder of any other Owner and is not subject to the requirements hereinafter set out in 19.10.

16.10 Abatement and Suit. The Declarant 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.

16.20 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 Declarant or by any Owner for whose benefit these restrictions and covenants are made.

16.30 Attorney's 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 not exclusive.

16.40 Inspection. Declarant may from time to time at any reasonable hour or hours, enter and inspect any land subject to these restrictions to ascertain compliance therewith.

16.50 Failure to Enforce Not a Waiver of Rights. The failure of Declarant 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.

16.60 Rights of Third Parties. Nothing contained in this Declaration, shall be construed so as to impose or create any duty or obligation on the Declarant 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.

16.70 Declarant Liability. The Declarant shall have no liability in or for damages of any sort to any Owner, lessee or occupant, or otherwise to any person, for any exercise or failure to exercise any right (or duty or obligation, if any) of the Declarant hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration. Provided however, any Owner may exercise any rights such Owner may have against the Declarant or otherwise seek to enforce the provisions of this Declaration against the Declarant, by an action in equity for specific performance or injunctive relief, to which the Declarant will be subject. These remedies of specific performance and injunctive relief shall be the only remedies against the Declarant for any exercise or failure to exercise any right (or duty or obligation, if any) of the Declarant hereunder, or in any manner arising herefrom, or for the granting approval or withholding of approval required or permitted under the term of this Declaration, all other remedies being expressly waived.

17.10 No Waiver. The failure of Declarant or any Lot Owner to enforce any restriction described herein shall in no event be deemed to be a waiver of the right to enforce such restriction thereafter or of the right to enforce any other restriction or covenant described herein.

18.10 Enforcement and Term. This Declaration and every covenant, term and provision hereof shall be enforceable by the Declarant and each and every Owner of a Lot, or Lots, in the Property from time to time. Such enforcement may be for injunctive relief or upon any other right of remedy that the aggrieved party may have. Any party successful in enforcing this Declaration shall be entitled to reimbursement of their costs of enforcement including, but not limited to, reasonable attorneys fees and court costs. 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 Dallas County, Iowa.

(a) Term. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the office of the Recorder of Dallas County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinafter provided. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by

judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect.

(b) Termination and Modification. This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Provided, however, until the Declarant has sold all of the Lots, Declarant may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective only after all other Owners are provided with a copy of the amendment or modification and the amendment or modification has been recorded in the office of the Recorder of Dallas County, Iowa.

19.10 Declarant's Assignment. The Declarant may, at any time, assign by written instrument to any other Owner or may merely disclaim, its right to add additional properties, of approval or disapproval of matters as described in this Declaration, as well as its duties and obligation thereunder, if any. After any such assignment or disclaimer, the Declarant shall have no further rights, duties or obligations hereunder. Any assignee of such rights shall, however, receive with the assignment all such duties and obligations and shall bind themselves to be obligated therefore.

20.10 Waukee City Ordinances. The terms and provisions of this Declaration shall apply to all improvements constructed on the Property unless the City of Waukee, Iowa, has any City Ordinances that create any obligations or burdens that are more restrictive than those described herein with such City Ordinances being controlling.

21.10 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property 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 the Property.

21.20 Rights of Mortgages. All restrictions and other provisions herein contained shall be deemed superior to all mortgages and deeds of trust hereafter executed upon the Property and if any portion of the Property is sold or acquired under a foreclosure of any mortgage or under the provision of any deed of trust, any purchaser at such sale, and the successors and assigns of such purchases, shall hold any Lot or other portion of the Property so purchased subject to all of the restrictions, covenants and other provisions of this Declaration.

21.30 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 the Property 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 Property and shall inure to the benefit of all grantees of the Property, their heirs, successors and assigns, and shall apply to and bind the grantees of any and all Lots, their heirs, successors and assigns.

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

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

21.60 Declarant's Assignment or Disclaimer. Declarant may at any time assign by written instrument to any Owner, or jointly to all Owners, or may merely disclaim, its rights of approval or disapproval of matters as described in this Declaration (and its 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 it thereafter have any other rights, duties or obligations hereunder as Declarant.

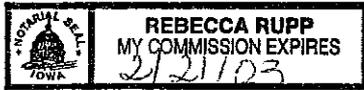
IN WITNESS WHEREOF, this Declaration was made the date first written above by the Declarant.

EAST PARK DEVELOPMENT, L.L.C.,  
an Iowa limited liability company

By: *James T. Campney*  
James T. Campney, President

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this 27th day of October, 2000, before me the undersigned, a notary public, in and for the said state, personally appeared James T. Campney, to me personally known, who being by me duly sworn, did say that he is the President of Eastpark Development, L.L.C., an Iowa limited liability company, executing the foregoing instrument; that said instrument was signed on behalf of the limited liability company by authority of its managers; and that James T. Campney, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it voluntarily executed.



*Rebecca Rupp*  
Notary Public in and  
for the State of Iowa

**CONSENT OF OWNER**

The undersigned, Owner of Lot 1 in WESTGATE BUSINESS PARK PLAT 2, hereby consents to the foregoing Declaration of Covenants and Restrictions for Westgate Business Park Plat 2.

VALLEY PAPER, INC.

By: *Troy J. Strawhecker*  
Troy J. Strawhecker, Vice President

STATE OF IOWA       )  
                                  )ss:  
COUNTY OF POLK    )

On this 27th day of October, 2000, before me, the undersigned, a Notary Public, in and for said State, personally appeared Troy J. Strawhecker, to me personally known who, being by me duly sworn, did say that he is Vice President of the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Troy J. Strawhecker as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.



*Rebecca Rupp*  
\_\_\_\_\_, Notary Public  
in and for the State of Iowa