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Prepared by & Return to: Timothy C. Hogan, 3101 Ingersoll Ave., Des Moines, IA 50312 (515) 279-9059

**DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS, AND RESTRICTIONS**

**THIS DECLARATION** is made this 7th day of March, 2006 by **WILLIAMS POINTE COMMERCIAL I, L.C.**, an Iowa limited liability company ("Declarant"), on behalf of itself and its successors and assigns forever.

**WHEREAS**, Declarant is the owner and developer of the following described real property (hereinafter the "Property"):

Lots 1, 2, 3, and Outlot "A" in WILLIAMS POINTE PLAT 9, an Official Plat in the City of Waukee, Dallas County, Iowa

**WHEREAS**, Declarant desires to establish certain easements, covenants and restrictions with respect to the lots located within the Property and any future lots established by the subdivision of Outlot "A" in Williams Pointe Plat 9 (hereinafter individually the "Lot" and collectively the "Lots").

**NOW, THEREFORE**, in consideration of the easements, covenants and restrictions contained herein, the sufficiency of such consideration is hereby acknowledged, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**  
**EASEMENTS**

1. **ACCESS EASEMENTS.** Declarant hereby grants and conveys to the owner of each Lot (hereinafter individually the "Owner" and collectively the "Owners"), and to the customers, invitees, lessees, sublessees, employees, agents, licensees, contractors, vendors and suppliers of each Lot (hereinafter the "Permittees") in common with others entitled to use each Lot, a non-exclusive easement for the passage of vehicles over and across the parking and driveway areas located on each Lot as the parking and driveway areas may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway and sidewalk areas of each Lot, as the parking, driveway and sidewalk areas may from time to time be constructed and maintained for such use. Such easement rights shall be subject to all reservations and other provisions in this Declaration. The Owner may relocate the parking and sidewalk areas located on his/her/its Lot;

provided however, that the Owner shall not reduce or alter the parking and sidewalk areas so as to materially impede ingress and egress through such Lot. The parking areas in each Lot are reserved for parking of the Permittees of the Owner of that Lot, and there shall be no general easement for "cross-parking" allowing the vehicles attending the business on one Lot to park on or within the parking areas of another Lot. Each Owner shall have the right to post appropriate signs advising the public of these parking restrictions and may enforce these restrictions by towing or other legal means. Each Lot shall be "self parked" (i.e., there shall be adequate parking in each Lot to serve the business(es) in that Lot, and no Owner shall be entitled to include spaces in another Lot to meet governmental parking requirements for that Owner's Lot). The Owner shall not reduce or alter the driveway areas depicted as "Ingress/Egress" on the Final Plat of Williams Pointe Plat 9 recorded in the office of the Recorder of Dallas County, Iowa (hereinafter the "Final Plat").

**2. EMERGENCY ACCESS EASEMENTS.** Declarant hereby grants and conveys to the City of Waukee, Iowa (hereinafter the "City"), a non-exclusive easement for the passage of emergency vehicles over and across the parking and driveway areas of each Lot as such parking and driveway areas may from time to time be constructed and maintained for such use and for the passage and accommodation of emergency personnel over and across the parking, sidewalk and driveway areas of each Lot as such parking, sidewalk and driveway areas may from time to time be constructed and maintained for such use. The rights encompassed within this grant shall include the right to use and enjoy all the entrances, exits, service drives and similar facilities now or hereafter established and constructed upon any portion of each Lot.

**3. DRAINAGE EASEMENT.** Declarant hereby grants and conveys to the City and the Owners a non-exclusive easement for locating and maintaining surface water flowage over and across the overland flowage easement granted by recorded instrument and/or depicted on the Final Plat in a manner that will permit the free and unobstructed flow of surface water over and across such Lots for the purpose of drainage and/or detention and which permits and allows the City to enter at any time upon and into the Lots to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair and to forever maintain the surface water flowage easement.

**4. UTILITY AND SEWER EASEMENTS.** Declarant hereby grants and conveys to the Owners a non-exclusive easement for the installation, use, maintenance, repair and replacement of utility services and distribution systems, including storm sewers, sanitary sewers, water mains, electric lines, gas lines, telephone lines and other similar utility services reasonably necessary for the orderly development and operation of the Property, now upon or hereafter installed on, across or under each Lot, to the extent reasonably necessary to service each Lot.

**5. RESERVATION OF EASEMENTS.** Declarant hereby reserves unto itself, for the benefit of all Lots and Owners, an easement right, title, and authority to relocate, alter or otherwise change the location of any utility or sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for drainage, ingress, egress, utility and similar purposes on or within any Lot. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, or amendment to the Final Plat recorded in the office of the County Recorder. Each Owner shall take title subject to the right and easements reserved herein; provided, however, the rights reserved shall not be exercised in a manner which unreasonably and adversely affects any structure or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Property.

6. **MAINTENANCE.** The Owner or occupant of each Lot upon which an easement is located shall keep and preserve that portion of the easement within his/her/its Lot in good repair and condition at all times, and shall not plant nor permit to grow any trees or other vegetative growth which might reasonably be expected to obstruct or impair usage of the easement; or affect grades in a manner which may interfere, obstruct or impede the flow of water or affect required detention basin volumes in the overland flowage easement.

**ARTICLE II**  
**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

1. **MEMBERSHIP.** Every Owner of a Lot shall be a Member of the Williams Pointe Commercial Owners Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2005 (hereinbefore and hereinafter the "Association"). Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership.

2. **VOTING.** Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of any Lot, or until Declarant waives, in writing, its right to be the sole voting member. Each Owner by acceptance of a deed to a Lot shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association. The allocation of voting by the Owner(s) shall be determined by a fraction in which the numerator is the total number of square feet of the Lot and the denominator is the total square feet of all of the Lots.

**ARTICLE III**  
**MAINTENANCE, INDEMNIFICATION AND INSURANCE BY ASSOCIATION**

1. **ASSOCIATION RESPONSIBILITY ELEMENTS.** The term "Association Responsibility Elements" shall mean the following:

- (a) The yard surrounding the commercial structure upon a Lot including all landscaping and hardscaping thereon.
- (b) Private streets, sidewalks, driveway and parking areas, and lighting relating thereto.
- (c) Irrigation system.
- (d) Entrance sign.
- (e) Private sanitary sewer and water main servicing more than one Lot within the Property.
- (f) Pond located within the overland flowage area and the fowl that habitat thereon.

Declarant or the Board of Directors of the Association shall have the right from time to time to establish, modify and enforce reasonable and uniformly applied rules and regulations governing the use of the Association Responsibility Elements. Such rules shall be observed and obeyed by the Owners and Permittees of each Lot.

2. **MAINTENANCE.** The Association, shall cause the Association Responsibility Elements to be maintained in good order and repair including, but not limited to, surface repair, snow and ice removal

(except for snow and ice removal on the private sidewalks located at entrances to any building structure or retail space located upon any Lot), general landscape maintenance of trees and shrubs, control of weed growth and/or preventative pesticides to control infestation of weeds and insects, routine mowing, general policing to maintain the Property free from debris and trash; and in the case of the private sanitary sewer system and the private water mains, service and repair consistent with similar publicly owned and maintained services. Declarant, the authorized representatives of the Association or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with such maintenance, repairs or replacements of or to any Association Responsibility Element affecting or serving the Lots.

**3. INDEMNIFICATION.** The Association hereby indemnifies and saves the Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from the Association Responsibility Elements, except if caused by the act or negligence of the Owner or his/her/its employees, agents or representatives.

**4. LIABILITY INSURANCE.** The Board of Directors of the Association shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Association Responsibility Elements with coverage limits of not be less than \$2,000,000 combined single limit per occurrence. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Association which may cover other property in addition to the Association Responsibility Elements. The Board of Directors of the Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors of the Association shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

#### **ARTICLE IV**

#### **MAINTENANCE, INDEMNIFICATION AND INSURANCE BY OWNER**

**1. MAINTENANCE.** The Owner shall maintain and repair at the Owner's own expense all structures, improvements and equipment located upon, in or about his/her/its Lot, excluding the Association Responsibility Elements. Any repair or replacement of an exterior structure, improvement or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces. All exterior structures, improvements and equipment shall be constructed in accordance with local ordinances and building codes.

**2. INDEMNIFICATION.** The Owner hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from his/her/its Lot (excluding any Association Responsibility Elements located thereon), except if caused by the act or negligence of the other party hereto.

**3. INSURANCE.** The Owner shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against

claims for personal injury, death or property damage occurring upon, in or about his/her/its respective Lot (excluding any Association Responsibility Elements located thereon) with coverage limits of not be less than \$2,000,000 combined single limit per occurrence. Each Owner shall provide the Association with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Owner which may cover other property in addition to the Owner's Lot.

4. **SUBORDINATION.** Each Owner for itself and its property insurer hereby releases the other Owners from and against any and all claims, demands, liabilities or obligations whatsoever for damage to property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

#### **ARTICLE V**

#### **ASSESSMENT FOR MAINTENANCE AND INSURANCE**

1. **ASSESSMENT.** Each Owner shall pay to the Association his/her/its proportionate share of the cost of maintenance and insurance of the Association Responsibility Elements incurred by the Association, such assessment to be established and collected as hereinafter provided. The Owner's proportionate share shall be calculated by applying the fraction referenced in Article II, Paragraph 2 (hereafter "Proportionate Share") to the total cost of the maintenance and insurance. The assessment, together with late fees, interest, costs and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of the Lot at the time when the assessment became due.

2. **ADDITIONAL ASSESSMENT.** In addition to the foregoing, the Association may levy against a Lot in its Proportionate Share, additional assessments for a maintenance reserve. Said reserve shall be used at the Association's discretion to make major repairs or replacements to the Association Responsibility Elements.

3. **PAYMENT OF ASSESSMENT.** The Owner shall pay to the Association on the first day of each month, in advance, such amount as the Board of Directors of the Association shall estimate to be equal to one-twelfth (1/12th) of the Owner's anticipated assessment for the ensuing year. In the event the total of the monthly assessments paid by an Owner exceeds the expenses incurred by the Association for that year, the excess shall be carried over and credited to the monthly assessments the following year. In the event the assessments paid by the Owners are insufficient to pay the actual costs incurred by the Association, then the Board of Directors of the Association shall levy a special assessment against each Lot for its Proportionate Share of the deficit. The Owners shall pay the Association the special assessment due within ten (10) days after the reconciliation is delivered. Declarant shall not be liable for any assessments upon Lots owned by it.

4. **NONPAYMENT OF ASSESSMENT.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all cost and

expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Responsibly Elements or abandonment of the Owner's Lot.

**ARTICLE VI**  
**MISCELLANEOUS**

1. **DURATION.** All easements and covenants contained in this Declaration shall run with and against the land so described and shall, except to the extent otherwise specifically provided in this Declaration, be a benefit thereto and a burden thereon. It is understood that Outlot "A" of Williams Pointe Plat 9 may hereafter be subdivided into one or more separate Lots. In such event the terms of this Declaration shall be deemed to continue to apply to and benefit and burden each such Lot and to create the same rights, easements and obligations as between and among the Lots as are herein created. The Proportionate Share of each of the subdivisions of Outlot "A" shall be calculated consistent with this Declaration.

2. **NO DEDICATION TO PUBLIC.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever, it being the intention of the Declarant that this Declaration is for the exclusive benefit of all Owners of the Property and their successors, assigns, mortgagees, tenants, customers and invitees, and that nothing in this Declaration, express or implied, shall confer upon any person, other than such Owners, and their successors, assigns, mortgagees, tenants, customers and invitees any rights or remedies under or by reason of this Declaration. The Owners of all Lots comprising the Property shall have the right from time to time to close all or any portion of the Property to such extent as may be necessary to prevent a dedication thereof to the public or the accrual of any rights in any person, not expressly granted rights hereunder.

3. **AMENDMENTS.** This Declaration may be amended (including the addition or deletion of Association Responsibility Elements) by an instrument recorded in the office of the County Recorder by the affirmative vote of not less than two-thirds (2/3) of the Owners pursuant to the allocation of voting by the Owners contained in this Declaration, provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the foregoing, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in any Lot.

4. **SUCCESSORS.** This Declaration shall be binding upon and inure to the benefit of the parties designated herein, their heirs, executors, administrators, beneficiaries, successors and assigns; provided that the respective Owners from time to time of the Lots forming the Property shall be liable in money damages and subject to the action for specific performance only for breaches of the undertakings contained in this Declaration occurring during their respective period of ownership of each Lot; provided further, however, that such successor-in-title to any of the Lots shall be subject only to an action for specific performance with respect to breaches of undertakings hereunder which occurred during the ownership of any predecessor-in-title.

5. **RIGHT OF ENFORCEMENT.** In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the Owners and all parties claiming under them shall have the right to enforce the covenants, conditions, and restrictions contained herein and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. Failure of the Association or any Owner to enforce any covenant, condition or restriction of this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same

thereafter.

6. **GOVERNING LAW.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

7. **HEADINGS.** The section headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any construction or interpretation of this Declaration or any part thereof.

8. **NO PARTNERSHIP.** Nothing in this Declaration shall be construed to make the Owners partners or joint venturers or render any of the Owners liable for the debts or obligations of the other Owners.

**ARTICLE VII**  
**ADDITION OR REMOVAL OF PROPERTY**

1. **SUBJECTING ADDITIONAL LAND TO DECLARATION.** Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the County Recorder. No approval of the Association or any other person shall be necessary.

2. **REMOVING LAND FROM OPERATION OF DECLARATION.** Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the County Auditor. Declarant shall signify this removal by filing an amendment to this Declaration with the County Recorder. No approval of the Association or any other person shall be necessary.

**IN WITNESS WHEREOF,** Declarant has executed this Declaration as of the day and year first above written.

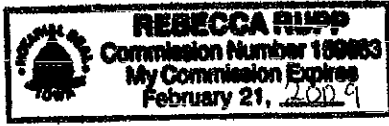
**WILLIAMS POINTE COMMERCIAL I, L.C.,**  
an Iowa limited liability company

By: \_\_\_\_\_  
John D. Gamble, Secretary

STATE OF IOWA            )  
  )ss:  
COUNTY OF DALLAS    )

On this 7<sup>th</sup> day of March, 2006, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JOHN D. GAMBLE, to me personally known, who being by me duly sworn did say that he is Secretary of the limited liability company, executing the foregoing instrument, that no seal has been procured by the limited liability company; that the instrument was signed on behalf of the limited liability company by authority of its managers; and that JOHN D. GAMBLE acknowledged the execution of the instrument to be the voluntary act and deed of the limited liability company by it

voluntarily executed.



By: Rebecca Rupp  
Printed Name: \_\_\_\_\_  
Notary Public