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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00156819

BK 15816 PG 270-277

DECLARATION OF COVENANTS

Preparer Information:

Glenna K. Frank, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 (515)-283-4130

RETURN TO:

Return Document to:

Terrance N. Vorbrich, Office of Economic Development, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309 (515)-283-4004

Grantor's Name: Confluence on Third LLC

Grantee's Name: City of Des Moines, Iowa

Legal Description: See Exhibit "1" attached hereto at page 7.

Prepared by: Glenna K Frank, Assistant City Attorney, 400 Robert D. Ray Dr., Des Moines, IA 50309 Phone: 515/283-4130
 Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
 Taxpayer: No change
 Title of Document: Declaration of Covenants
 Grantor's Name: Confluence on Third LLC
 Grantee's Name: City of Des Moines, Iowa
 Legal Description: See Exhibit "1" attached hereto at page 7.

DECLARATION OF COVENANTS

Confluence on Third LLC, a Delaware limited liability company (hereinafter "Developer"), in consideration of the mutual obligations undertaken by Developer and the **City of Des Moines, Iowa**, a municipal corporation (hereinafter "City"), in the **Urban Renewal Development Agreement** dated as of October 92, 2015 (hereinafter the "Agreement"), does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to the real estate in the City of Des Moines, Polk County, Iowa, identified as the Property in the said Agreement, and more specifically described in Exhibit "1" attached hereto.

Sec. 1. Agreement / Conceptual Development Plan. The Agreement is recorded in Book 15776, Page 285 in the office of the Polk County Recorder and available for public inspection in the office of the City Clerk, at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, This Declaration of Covenants is executed and filed by Developer in performance of its obligations under Section 4.2 of the Agreement. All references herein to the approved Conceptual Development Plan are intended to refer to the Conceptual Development Plan attached as Exhibit "A" to the Agreement as the same may be amended from time to time by Developer with the written approval of City.

Sec. 2. Duration. The Property shall be subject to the covenants set forth herein for a term (the "Restricted Term") commencing upon the recording of this Declaration of Covenants and continuing until the earlier of December 31, 2030, or the recording of a Termination Certificate by City which certifies that Developer has satisfied all of its obligations under the Agreement. However, such obligations and covenants shall be binding on the Developer itself, each successor in interest to the Property and any improvements thereon, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property or any improvements thereon or part thereof.

Sec. 2. Covenants. During the Restricted Term, the Property and each portion thereof shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Covenants"):

- A. Development. Developer shall undertake the development of the Property by constructing the Improvements thereon in accordance with the terms of the Agreement, including the approved Conceptual Development Plan, and all applicable State and City laws and regulations.

2. Residential Use. The Improvements shall be devoted, maintained and used for residential uses, in conformity with the approved Conceptual Development Plan.
3. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability, or familial status in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the Improvements erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the Property or the Improvements erected thereon.
4. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
5. Maintenance. The Improvements constructed upon the Property pursuant to the Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan and Construction Plans. In the event of fire or other casualty loss, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan and Construction Plans shall be commenced within one hundred twenty (120) days and diligently pursued to completion.
6. Prohibition Against Transfer. A. Developer shall not, without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein, or any agreement to do any of the same which transaction or transaction would occur, close or otherwise be finalized prior to issuance of the Certificate of Completion for the portion of the Improvements pursuant to Section 3.5 of the Agreement, except (i) any such transfer to a lender for the purpose of obtaining funds only to the extent necessary for acquiring the Property and constructing the Improvements, or (ii) easements or other encumbrances necessary for the Improvements. The approval by City shall not be unreasonably withheld. For the elimination of doubt, the preceding sentence does not prohibit Developer from contracting, and Developer may at its sole discretion contract, with an unaffiliated party for the sale and disposition of the Property, in whole or in part, provided any such conveyance transaction does not close until issuance by the City of a Certificate (or Certificates, as the case may be) of Completion for the Improvements in accordance with Section 3.5 of the Agreement, and further subject to compliance by such purchaser with the Agreement and this Declaration of Covenants.
 - B. City shall be entitled to require as a condition to any such approval that:
 - (i) Any proposed transferee shall have the qualifications and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer (or, in the event the

transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);

- (ii) Any proposed transferee, by an instrument in writing satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part);
- (iii) All instruments and other legal documents involved in effecting transfer be submitted to City for review prior to the transfer;
- (iv) The consideration payable for any portion of the Property upon any such sale shall not exceed an amount representing the actual cost (including carrying charges) to Developer of the Property (or allocable to the part thereof or interest therein transferred) and the improvements already constructed by Developer pursuant to the Agreement. The intent of this provision is to preclude assignment of this Agreement or transfer of the Property (or any parts thereof) for profit prior to issuance of the Certificate of Completion; and
- (v) Provided, that in the absence of specific written agreement by City to the contrary, no such approved transfer by City shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

7. Limitation Upon Encumbrance of Property. A. Prior to issuance of the Certificate of Completion for the portion of the Improvements pursuant to Section 3.5 of the Agreement, Developer shall not engage in any transaction imposing any encumbrance or lien upon the Property or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.

B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only: (i) for the purpose of obtaining funds to the extent necessary for acquiring the Property and constructing the Improvements, and (ii) for easements or other encumbrances necessary for the Improvements. Developer shall use its best efforts to cause to be included in any mortgage on the Property a provision requiring that whenever the mortgagee shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Section 7.6 of the Agreement.

C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraph A, above, so long as Developer shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the

collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Developer to settle any such contest), and Developer shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, interest, costs and expenses thereon or in connection therewith. Developer shall give City prompt written notice of any such contest and of the final outcome thereof.

8. Situs for Taxation. Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property. Developer, its successors and assigns, and every successor in interest to the Property and the Improvements thereon, or any part thereof, shall not cause or voluntarily permit any part of the Property and the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the City of Des Moines in its entirety and, except for available Urban Revitalization tax abatement under Iowa Code Chapter 404 as limited pursuant to Article 5 of the Agreement, apply for a deferral of property tax on the Property pursuant to any present or future statute or ordinance.

Sec. 3. Required Terms in any Conveyance. During the Restricted Term, Developer shall endeavor to include in every deed, lease, sublease and other instrument conveying all or any part of Developer's interest in any portion of the Property, a provision identifying the terms, conditions, restrictions and requirements of this Article and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this Article against Developer's successors and assigns to the same extent as against Developer. Developer shall cooperate in good faith in the City's enforcement of the requirements of this Declaration of Covenants against Developer's successors and assigns to any interest in the Property.

Sec. 4. Covenants; Binding Upon Successors in Interest. It is intended that the terms of this Declaration of Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against Developer, its successors and assigns and every successor in interest to any portion of the Property and the Improvements erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such Property, or any part thereof.

Section 5. City's Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Declaration, both for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all

the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Sec. 6. Warranty of Title. Developer does hereby covenant with City that Developer holds legal and equitable title to the portions of the Property described in Exhibit "1" attached hereto.

[remainder of page intentionally left blank; signature page follows]

SIGNED this 9th day of October, 2015.

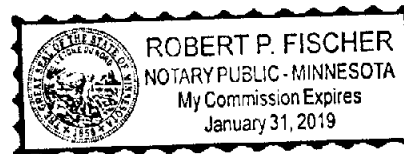
Confluence on Third LLC

[Signature]
By: Brian J. Roers
Its: Manager

State of Iowa)
) ss:
County of Polk)

On this 9th day of October, 2015, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Brian Roers, who, being by me duly sworn did state that s/he is a Manager of **Confluence on Third LLC**, a manager managed Delaware limited liability company; that the foregoing instrument was signed on behalf of the company; and that s/he, as a Manager, acknowledged the execution of the instrument to be the voluntary act and deed of the company.

[Signature]
Notary Public in the State of MN



My Commission Expires: January 31, 2019

ACCEPTANCE:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Des Moines by Resolution and Roll Call No. 15- 1733, passed on the 12th day of October, 2015, and this certificate is made pursuant to authority contained in said Resolution.

Signed this 12th day of October, 2015.

[Signature]
Diane Rauh, City Clerk of the City of Des Moines, Iowa

Exhibit "1"

Property Description

Approximately one and six tenths (1.6) Developable Acres of land (excludes ponds, wetlands and other land unable to support improvements within the Premises) comprising the following four (4) parcels (excluding city owned alleyways separating them):

1. Lots 1 and 2 in Block 29 in the Original Town of Fort Des Moines, now in and forming a part of the City of Des Moines, Iowa, and locally known as 103 S.W. 3rd, Des Moines, Iowa.
2. Lots 3 and 4 in Block 29 in Fort Des Moines, now included in and forming a part of the City of Des Moines, Iowa.
3. Lots 5 and 6, in Block 29, in Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County Iowa.
4. Lots 7 and 8, in Block 29, in Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County Iowa.

And

VACATED

ALL OF THE NORTH/SOUTH ALLEY RIGHT OF WAY, AND ALL OF THE EAST/WEST ALLEY RIGHT OF WAY, INCLUDING INTERSECTION OF BOTH ALLEYS, IN BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 9041 SQUARE FEET.

VACATED