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023 RF.



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Recorded: 06/02/2011 at 01:35:15 PM  
Fee Amt: \$14.00 Page 1 of 2  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2011-00086814

BK 13867 PG 253-254

Prepared by: Lawrence I. James Jr., 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312, 515-279-9059  
Return to: Lawrence I. James Jr., 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312, 515-279-9059

RETURN TO:

### EASEMENT FOR BUILDING SETBACK

Burdened Property (3120 Merle Hay Rd., Des Moines, IA):

The South 6.5 feet of Lot 153 in Clover Acres, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

Benefited Property (3100 Merle Hay Rd., Des Moines, IA):

A part of lots 154 & 155 in Clover Acres, an Official Plat, now included in, and forming a part of the City of Des Moines, Polk County, Iowa, more particularly described as follows: Commencing at a point of reference at the Southeast corner of said Lot 155; thence North 89° 49' 10" West along the South line of said Lot 155, a distance of 24.48 feet to the Point of Beginning; thence North 89° 49' 10" West along the South line of said Lot 155, a distance of 168.52 feet; thence North 0° 04' 48" East along the West line of said Lots 155 & 154, a distance of 195.77 feet; thence South 89° 54' 50" East along the North line of said Lot 154, a distance of 181.30 feet; thence South 0° 09' 58" West, 188.61 feet; thence South 59° 19' 14" West, 14.54 feet to the Point of Beginning.

WHEREAS, Boston Commons Limited Company, an Iowa limited liability company (the "Grantor") is the owner of the Burdened Property located at 3120 Merle Hay Rd., in the City of Des Moines, Iowa, more specifically described above; and,

WHEREAS, Boston Commons Limited Company, an Iowa limited liability company (the "Grantee"), is the owner of the Benefited Property located at 3100 Merle Hay Rd., in the City of Des Moines, Iowa, more specifically described above; and,

WHEREAS, Grantee seeks to construct and maintain an addition to the existing building on the Benefited Property (the "Improvement") that does not maintain the 10.0 foot setback from the shared property line with the Burdened Property as otherwise required by the Building and Fire Codes of the City of Des Moines, Iowa; and,

WHEREAS, the City of Des Moines, Iowa, will issue a permit for the proposed Improvement only if the City can be assured that no building will be constructed upon the Burdened Property within the required Building and Fire Code separation from the proposed Improvement; and,

WHEREAS, Grantor hereby agrees that any building hereafter constructed upon the Burdened Property shall maintain the required Building and Fire Code separation from an artificial property line that is 10.0 feet horizontally distant from the exterior surfaces of the Improvement upon the Benefited Property.

THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That Grantor, for valuable consideration, receipt of which is hereby acknowledged, does hereby convey unto Grantee a building setback easement upon and over the Burdened Property.

This easement shall be subject to the following terms and conditions:

1. **Setback.** Any building hereafter constructed upon the Burdened Property shall maintain the required Building and Fire Code separation from an artificial property line that is 10.0 feet horizontally distant from the exterior surfaces of the Improvement upon the Benefited Property.
2. **Right of Access.** Grantee and its contractors and agents shall have the right of access upon and across the Burdened Property for the limited purpose of constructing and maintaining the Improvement upon the Benefited Property, at reasonable times and upon reasonable advance notice to Grantor. However, Grantee shall be responsible for any damage to the Burdened Property resulting from the exercise of such right of access, and shall promptly restore the Burdened Property to its condition prior to such damage.
3. **Easement Runs With Land.** This easement shall be deemed to run with the land and shall be binding upon Grantor and its heirs, successors and assigns, for the benefit of the Benefited Property and the City of Des Moines.
4. **Termination.** This easement shall terminate upon the destruction or removal of the Improvement on the Benefited Property.

Dated this 31 day of May, 2011.

BOSTON COMMONS LIMITED COMPANY,  
an Iowa limited liability company

By: \_\_\_\_\_

Ronald L. Daniels, President

STATE OF IOWA, COUNTY OF POLK:

This instrument was acknowledged before me on May 31, 2011, by Ronald L. Daniels, President of Grantor.

By: \_\_\_\_\_

Notary Public

