

BK: 2018 PG: 928
Recorded: 1/17/2018 at 3:44:13.0 PM
Fee Amount: \$32.00
Revenue Tax:
Chad C. Airhart Recorder
Dallas County, Iowa

DECLARATION OF RESTRICTIVE COVENANTS

Prepared by and return to: Michael Schilken
Baird Holm Law Offices
1700 Farnam Street, Suite 1500
Omaha, Nebraska, 68102
402/344-0500

Grantor: 117 Land Company, L.L.C.

Grantee: M.I.I.-Crescent Ridge, LLC

Legal Description: See Attached Document page 1

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL PERSONS BY THESE PRESENTS:

That 117 Land Company, L.L.C., an Iowa limited liability company is the present owner of the following real estate all located within Dallas County, Iowa ("Burdened Parcels"): Lots 1, 3, 4, 5, and 6, I -80 West Industrial Park, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa; and

That part of the North fractional $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 78 North, Range 26 West of the 5th P.M., Dallas County, Iowa, lying South of the Interstate Route No. 80, except Parcel "A" of the survey of the Fractional NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18-78-26, as shown in Book 748, Page 599, in the office of the Recorder of Dallas County, Iowa.

Lot Three (3) of the Auditor's Plat of that part of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section 17 in Township 78 North, of Range 26 West of the 5th P. M., Dallas County, Iowa, EXCEPT Commencing at the NW Corner of Sec. 17-T78N-R26W of the 5th P. M., Dallas County, Iowa, thence S 00°00' 658.43 feet along the section line to the point of beginning, thence continuing S 00°00' 87.17 feet, thence S 89°12'E 382.70 feet, thence S 06°12'E 130.00 feet, thence S 84°35'E 225.61 feet, thence N 02°55'W 30.62 feet, thence N 73°50'E 338.22 feet, thence N 02°55'W 128.79 feet, thence N 73°50'E 400.92 feet to the centerline of a county road, thence N 00°50'E 75.00 feet along said centerline, thence S 73°50'W 423.54 feet, thence N 02°55'W 568.48 feet to the south right of way line of Interstate No. 80, thence N 85°04'W 315.13 feet along said right of way line, thence S 02°55'E 676.50 feet, thence N 89°50'W 609.02 feet to the point of beginning.

Parcel "A" of the survey of all of Lot 4 and part of Lot 3 of the Auditors Plat of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 17, Township 78 North, Range 26 West of the 5th P.M., all being in and forming a part of the City of Waukee, Dallas County, Iowa, as shown in Book 2004, Page 5051, in the office of the Recorder of Dallas County, Iowa.

That for purposes of this Agreement, 117 Land Company, L.L.C. shall be referred to herein as "Declarant", and Declarant does hereby declare that the Burdened Parcels shall be subject to the restrictive covenants set forth in paragraph 1. below.

The restrictive covenants set forth herein are for the benefit of all present and future owners, and their successors and assigns (hereinafter individually "Beneficiary" and collectively "Beneficiaries") of Lot 2, I -80 West Industrial Park, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa (the "Benefited Property"), and have been executed and recorded as a part of the consideration for the sale of the Benefited Property by Declarant to the Grantee, M.I.I.-Crescent Ridge, LLC, a Nebraska limited liability company.

The restrictive covenants set forth herein shall pass with the Burdened Parcels, or any parcel, lot or site thereof, and shall bind each and every owner thereof or of any interest therein, including the Declarant, and the respective assigns and successors in interest of such owners and any lessees, tenants and other occupants of any building thereon. These restrictive covenants are imposed upon the Burdened Parcels and are to be construed as restrictive covenants running with the land and with each and every part thereof:

1. PROHIBITED USES. No portion of the Burdened Parcels shall be used for: a mini-storage warehouse, self-storage facility, self-service storage facility, without the prior written consent of the owner of the Benefited Property. Such a storage facility herein shall mean a rented or leasing storage space (such as rooms, lockers, containers and/or outdoor space), also known as "storage units" that contain less than or equal to eight hundred rentable storage feet ("Restrictive Covenants").

2. APPROVAL OF REZONING OR DEVELOPMENT OF THE BENEFITED PROPERTY AND THE BURDENED PROPERTY.

(a) It is an express condition for granting these Restrictive Covenants that the owner of the Benefited Property shall not object to any rezoning, replatting, site plan, or building permit for development of any portion of the Burdened Parcels except on the grounds of violation of the above prohibited uses, or violation of such other common law, state law, federal law, or applicable rule or regulation that grants rights to the owner of the Benefited Property which would be violated by the said rezoning, replatting, site plan, or building permit for development of any portion of the Burdened Parcels.

(b) It is an express condition for granting these Restrictive Covenants that the Declarant, as owner of the Burdened Parcels, and on behalf of all present and future owners and their successors and assigns of the Burdened Parcels, shall not object to any rezoning, replatting, site plan, or building permit for development of any portion of the Benefited Property except on the grounds of violation of such common law, state law, federal law, or applicable rule or regulation that grants rights to the owner of the Burdened Parcels which would be violated by the said rezoning, replatting, site plan, or building permit for development of any portion of the Benefited Property.

3. REMEDIES FOR VIOLATIONS. Upon a violation or breach of any of the Restrictive Covenants set forth herein any Beneficiary or any such Beneficiary's respective successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them and to recover damages for breach thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

4. TERM AND EXTENSIONS; AMENDMENT. (a) This Declaration of Restrictive Covenants, and all Restrictive Covenants contained in this Declaration, shall continue in effect for an initial period of twenty (20) years beginning on the date of execution of this Declaration of Restrictive Covenants set forth below. Thereafter, this Declaration of Restrictive Covenants shall

be automatically extended for successive terms of ten (10) years each, unless all Beneficiaries then owning any interest in the Benefited Property or any portion thereof, by written declaration, signed and acknowledged by them and duly recorded with the Dallas County, Iowa, Recorder's office, elect to terminate this Declaration effective as of the end of the then current term.

(b) Except as provided in subsection 4(a) above, this Declaration of Restrictive Covenants may only be modified or amended by a written amendment signed by all owners of the Burdened Parcels and the Benefited Property.

5. DECLARATION SHALL CONTINUE NOTWITHSTANDING BREACH. It is expressly agreed that no breach of this Declaration shall (i) entitle any owner of the Burdened Parcels or Benefited Property, or any portion thereof, to cancel, rescind or, otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

6. RULE AGAINST PERPETUITIES. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective being contrary to applicable law or prohibited by the "rule against perpetuities" or any similar law, then in that event only the term hereof shall be reduced to the maximum period of time which does not violate such law or the rule against perpetuities as set forth in the laws of the State of Iowa.


7. WAIVER. No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the Restrictive Covenants herein contained, shall be construed as a waiver thereof or acquiescence therein.

8. SEVERABILITY. In the event any one or more of the foregoing Restrictive Covenants is declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions, reservations and restrictions not specifically declared to be void or unenforceable, but all of the remaining Restrictive Covenants not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

IN WITNESS WHEREOF, the parties have caused these presents to be executed this 27 day of December, 2017.

117 Land Company, L.L.C., an Iowa
limited liability company

By:


Toby Tolstenson

, Member

STATE OF IOWA)
) ss.
COUNTY OF Dubuque)

On this 29 day of December, 2017, before me, a Notary Public in and for said State, personally appeared Toby Torstenson, to me personally known, who being by me first duly sworn, did state that they are the Member of 117 Land Company, L.L.C. an Iowa limited liability company, that no seal has been procured by said Company, that said instrument as signed on behalf of the Company by the authority of the Member thereof, and that they acknowledged the execution of said instrument to be the voluntary act and deed of said Company, by it and by them voluntarily executed.



Samantha Sweet
Notary Public in and for the State of Iowa

Mortgage Holder Subordination Consent

The undersigned is the beneficiary of a mortgage, deed of trust, or other security interest in any one or more of the Burdened Parcels as of the date of the Declarant's granting of the above Restrictive Covenants. The undersigned does hereby intentionally and unconditionally waive, relinquish and subordinate the priority and superiority of the undersigned's interest in any one or more of the Burdened Parcels, and the undersigned's right and interest in the Burdened Parcels to the enforceability of the above Restrictive Covenants thereunder to the lien or charge of said mortgage, deed of trust, or other security interest and any and all extensions, renewals, modifications or replacements thereof, as if the Restrictive Covenants were filed with the Dallas County Recorder prior to the filing of said mortgage, deed of trust, or other security interest. The undersigned does hereby consent and agree that any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Burdened Parcels prior and superior to the Restrictive Covenants.

By: Chad Dotan
Its: Vice President

STATE OF Iowa)
) ss.
COUNTY OF Polk)

On this 3 day of January, 2018, before me, a Notary Public in and for said State, personally appeared Chad Dotan, to me personally known, who being by me first duly sworn, did state that they are the Vice President of Iowa Trust & Savings Bank that no seal has been procured by said company, that said instrument as signed on behalf of the company by the authority of the Vice President thereof, and that they acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by them voluntarily executed.

Debra A. Faber
Notary Public

