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Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2012-00008398

BK 13926 pg 966-969

Prepared by: Roger K. Brown, Assist City Atty, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4541
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer: No charge
Title of Document: Declaration of Covenants
Grantor's Name: 3801 LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description:

The West 50 feet of Lots 34 through 37, and except streets, Lots 43 through 54, Block P, Aviation Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

DECLARATION OF COVENANTS

3801 LLC, an Iowa limited liability company (hereinafter the "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 July 25, 2011, (hereinafter the "Agreement"), does hereby CONVEY unto the said City the beneficial interest of the covenants set forth below, in and to the Property described above.

Sec. 1. Background. A. The City of Des Moines is engaged in carrying out an urban renewal plan known as the Merle Hay Commercial Area Urban Renewal Plan (the "Urban Renewal Plan") to reinforce the existing development and encourage new development in the Project Area that creates retail, office and other commercial space that appeals to local residents, visitors and businesses; that serves and strengthens the surrounding commercial corridors and residential neighborhoods; that retains, expands and creates new employment opportunities and that retains and expands the existing tax base. The Urban Renewal Plan was adopted by the City Council of the City of Des Moines on July 14, 2008 by Roll Call No. 08-1240, and was recorded in the land records of the Polk County Recorder on November 19, 2008, in Book 12835, commencing at Page 47.

B. The City entered into the Agreement with Developer in furtherance of the Urban Renewal Plan. Pursuant to the Agreement, Developer has undertaken to improve the Property by constructing a multi-tenant in-line commercial plaza building at least 15,300 square feet in size with the associated storm water management, landscaping and parking facilities, herein collectively

referred to as the Improvements.

C. The Agreement further provides for the City to issue a Certificate of Completion in recordable form to memorialize Developer's satisfactory completion of its obligation to construct the Improvements.

D. This Declaration is executed and recorded by Developer in performance of its obligations under Section 301 of the Agreement.

Sec. 2. Duration. The agreements and covenants provided in this Declaration shall remain in effect for 15 years following the issuance of the Certificate of Completion pursuant to Article 2 of the Agreement. However, such agreements and covenants shall be binding on 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. This Declaration shall immediately terminate upon issuance by the City of a Termination Certificate pursuant to Section 607 of the Agreement.

Sec. 3. Restrictions on Use. Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property described above, and the improvements erected or to be erected thereon, or any part thereof, that Developer and such successors and assigns, shall comply with the following conditions and requirements:

- a) Prohibition Against Discrimination in Sale or Leasing. Developer shall not discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability or familial status in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, and the improvements erected or to be 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 and the improvements erected or to be erected thereon.
- b) Prohibition Against Discrimination in Employment. Developer agrees that in the employment of persons upon the Property, Developer shall comply with all federal, State of Iowa, and local laws prohibiting discrimination uniformly applied of general applicability.
- c) Urban Renewal Plan. The Property shall be used in conformity with the land use requirements of the Merle Hay Commercial Area Urban Renewal Plan as amended and existing on the date of this Agreement.
- d) Payment of Taxes. Developer acknowledges and agrees that it will pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property before the same become delinquent.

Sec. 5. Covenants Binding Upon Successors in Interest. It is intended that the agreements and covenants provided in this Declaration 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 Declaration or the Agreement, be binding, to the fullest 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 the Property, and the improvements erected or to be erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of the Property and Improvements, or any part thereof.

Sec. 6. 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; provided, however, that there are no third party beneficiaries of this Declaration, 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. 7. Required Terms in any Conveyance. 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 the restrictive covenants imposed pursuant to this Declaration upon such property and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of such covenants 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.

SIGNED this 25th day of July, 2011.

" Developer"

3801 LLC, an Iowa limited liability company

By: Rich Eychaner
Rich Eychaner, Managing Member

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on July 25, 2011, by **Rich Eychaner**, as the Managing Member of **3801 LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.

Sandra Drepper
Notary Public in the State of Iowa
My commission expires: 2/23/12

