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Fee Amt: \$47.00 Page 1 of 9  
Polk County Iowa  
TIMOTHY J. BRIEN RECORDER  
File# 2005-00004428

BK **10640** PG **970-978**

RETURN TO:

**RETURN TO: City Clerk's Office, 400 Robert D. Ray Drive, Des Moines, Iowa 50309-1891**  
Prepared by Roger K. Brown, Assistant City Attorney; 400 Robert D. Ray Drive, Des Moines IA 50309 283-4130

AFTER RECORDING RETURN TO:

Prepared by: Roger K. Brown, Assist. City Atty, 400 Robert D. Ray Drive, Des Moines, IA 50309 515/283-4130

**Re:** The Property in the City of Des Moines, Polk County, Iowa, generally lying east of Fleur Drive and north of McKinley Avenue, and more specifically described in Exhibit "A" attached hereto.

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## Declaration of Covenants

**RACCOON VALLEY INVESTMENT COMPANY, L.C.**, an Iowa limited liability company (hereinafter "Developer"), in consideration of the mutual obligations undertaken by it and the **CITY OF DES MOINES, IOWA**, a municipal corporation (hereinafter "City"), in the **Urban Renewal Development Agreement** dated as of June \_\_, 2004, (hereinafter "Agreement"), does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to the Property described above.

### Preamble

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken a program for the reconstruction or rehabilitation of slum and blighted areas in the City, specifically to stimulate economic revitalization; to make use of under utilized areas; to remove conditions which have prevented normal development of the land by private enterprise; and to avoid stagnant and unproductive conditions of land which is potentially useful and viable for contributing to the public health, safety and welfare and in this connection is engaged in carrying out an urban renewal project known as the Fleur Drive Commercial Urban Renewal Project (hereinafter called the "Project") in an area (hereinafter called the "Project Area") located in the City of Des Moines; and,

WHEREAS, on June 7, 2004, the City Council approved the Urban Renewal Plan for the Fleur Drive Commercial Urban Renewal Area (hereinafter called the "Urban Renewal Plan") which was recorded in the land records in the Office of the Recorder for Polk County, Iowa, on June 17, 2004, in Book 10596, commencing at Page 575; and,

WHEREAS, the Developer owns the Property described above which is located in the Project Area; and,

WHEREAS, the Developer owns the Property described above which is located in the Project Area; and,

WHEREAS, pursuant to the Agreement, Developer has agreed to redevelop the Property for commercial and multi-family residential use by demolishing or renovating the existing buildings and by constructing new buildings (hereinafter collectively called the "Improvements") for commercial and multi-family residential use in compliance with the Minimum Development Requirements set forth in the Agreement and in compliance with a Conceptual Development Plan and Construction Plans to be approved pursuant to Article 1 of the said Agreement; and,

WHEREAS, pursuant to the Agreement, upon the substantial completion of the portion of the Improvements located upon any portion of the Property, City shall issue a Certificate of Completion for that portion of the Property which shall evidence that Developer's obligations under the Agreement with respect to the construction of the Improvements upon that portion of the Property have been satisfied and terminated.

NOW THEREFORE, this Declaration of Covenants is executed and filed by Developer in performance of its obligations under Section 35 of the Agreement.

### **Article 1. Urban Renewal Covenants**

Section 11. Duration. A. The Urban Renewal Covenants imposed pursuant to this Article shall apply to all the Property commencing upon the date of recording of this Declaration of Covenants. These covenants shall remain in effect on each portion of the Property until the later of December 31, 2012, or 17 years after the date a Certificate of Completion is issued by the City of Des Moines for such portion of the Property.

B. Upon expiration of the Urban Renewal Covenants on a portion of the Property and request by Developer, City shall issue a Termination Certificate in recordable form certifying that all covenants and obligations under the Agreement and this Declaration of Covenants with regard to that portion of the Property are of no further force and effect.

Section 12. Covenants. The Property and each portion thereof shall be subject to the following covenants, limitations and restrictions regarding its future use and development:

1. 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, national origin, ancestry, disability, familial status or sexual orientation in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or 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 or the improvements erected or to be erected thereon.

2. 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.
3. Maintenance. Subject to Section 22 below, the Improvements constructed upon the Property pursuant to this 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 ninety (90) days and diligently pursued to completion.
4. Fire, Extended Coverage Insurance. Subject to Section 22 below, Developer shall keep in force fire and extended coverage insurance upon the Improvements with insurance underwriters authorized to do business in the State of Iowa satisfactory to City. Such insurance shall be in an amount equal to the replacement cost of the Improvements, excluding cost of foundations, underground pipes, wiring and outside paving, and the contents and finishes of individual tenant spaces in the possession and control of a tenant. If requested by the City, Developer shall deliver to the City a current certificate of insurance that clearly discloses on its face coverage in conformity with all of the foregoing requirements and a certified copy of the policy. In the event of destruction of the Improvements or any part thereof, said insurance and all monies payable by reason of such insurance or destruction to Developer shall be used by Developer within 90 days for the purpose of repairing the Improvements and restoring the same to their former condition and use or for the purpose of replacing the Improvements, with equivalent or more suitable improvements in substantial conformance with the approved Conceptual Development Plan and approved Construction Plans.
5. Taxes. Developer shall pay all taxes and assessments, general or special, levied upon or assessed against any part of the Property or Improvements before the same become past due and delinquent.
6. Prohibition Against Conversion of Commercial Spaces. The portion of the Improvements identified on the approved Conceptual Plan as space for commercial retail, office, or apartment use shall be devoted solely to such uses. No part of such commercial space shall be devoted to any use which would cause it to be assessed as other than commercial property for property tax purposes.

7. Limitation on Tax Abatement. Developer may seek urban revitalization tax exemption (tax abatement) pursuant to Iowa Code Chapter 404 ONLY FOR improvements to the Property assessed as residential property or assessed as commercial property, if such commercial property consists of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes. Any application for tax abatement filed in violation of this limitation may be denied by City.

Section 13. 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 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 Article against Developer's successors and assigns to any interest in the Property.

Section 14. Covenants; Binding Upon Successors in Interest. It is intended that the covenants undertaken by Developer pursuant to this Article 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 or to be erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of the Property, or any part thereof.

## **ARTICLE 2. REMEDIES.**

Section 21. In General. Except as otherwise specifically provided in this Declaration of Covenants, in the event of any default of this Declaration of Covenants, or any of its terms or conditions, by any owner, tenant or occupant of the Property, such party shall, upon written notice from City, proceed immediately to cure or remedy such default, and, in any event, shall complete such cure or remedy within thirty (30) days after receipt of such notice. In case such action is not promptly taken or not diligently pursued, or the default shall not be cured or remedied within such time, the City may declare the offending party be in breach of this Declaration of Covenants. Upon any breach of this Declaration of Covenants, in addition to such other rights as it may have hereunder, the City may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such breach, including, but not limited to, proceedings to compel specific performance by the party in breach of its obligations and for damages.

Section 22. Specific Remedies. A. Failure to Construct Improvements. In the event Developer fails to timely complete the Improvements or any phase of the Improvements, the City's sole remedy for such default shall be the withholding of the Economic Development Grant anticipated in the Agreement for the phases of the Improvements which are not timely completed.

B. Failure to Reconstruct Improvements. In the event that any of the Improvements are destroyed or substantially damaged, City may withhold payment of all future installments on the Economic Development Grant for the phase of the Improvements so destroyed or substantially damaged, until repairs are commenced to restore the Improvements to their former condition or to replace the affected Improvements with equivalent or more suitable improvements. If Developer does not timely restore the Improvements to their former condition or replace the affected Improvements with equivalent or more suitable improvements in substantial compliance with the approved Conceptual Development Plan and Construction Plans, the City's sole remedy for such default shall be to terminate all further payments on the Economic Development Grant for the affected phase of the Improvements.

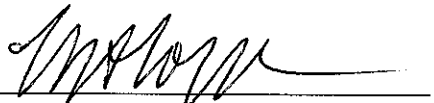
Section 23. Other Rights and Remedies, No Waiver by Delay. City shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this Declaration of Covenants. Provided, that any delay by City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive City of or limit such rights in any way; it being the intent of this provision that City should not be constrained to exercise such remedies at a time when the City may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City with respect to any specific default by any party shall be considered or treated as a waiver of the rights of City with respect to any other defaults by any other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City.

Section 24. Enforced Delay in Performance. Developer shall not be considered in breach of, or in default of, its obligations with respect to this Declaration of Covenants, or any portion thereof, in the event of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, temporary injunctions, acts of God, acts of the public enemy, acts of government, improper acts of the City, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Developer shall be extended for the period of the enforced delay: Provided, that the Developer shall, within twenty (20) days after the beginning of any such enforced delay, have notified the City thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.

IN WITNESS WHEREOF, Developer has caused this Declaration of Covenants to be duly executed and recorded.

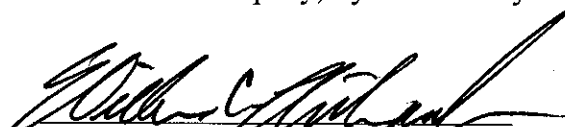
**" DEVELOPER "**

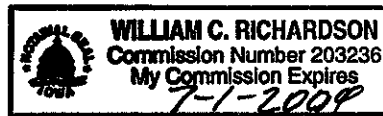
**Raccoon Valley Investment Company, L.C.**, an Iowa limited liability company

By:   
Michael A. Coppola, Manager

State of Iowa            )  
                                  ) ss:  
County of Polk         )

On this 7TH day of JUNE, 2004, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared **Michael A. Coppola**, to me personally known, and who, being by me duly sworn did state that he is the Manager of **Raccoon Valley Investment Company, L.C.**, an Iowa limited liability company; that the foregoing instrument was signed on behalf of the company by authority of its members; and that he, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of said company, by him and by the company voluntarily executed.

  
Notary Public in the State of Iowa



Exhibits:

"A" - Legal Description of the Property

**Exhibit "A"**  
to the  
Declaration of Covenants  
**Description of the Property**

The Property may be described as follows:

A tract of land in the Southwest 1/4 of the Southeast 1/4 of Section 20, Township 78 North, Range 24 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa, more specifically described as follows:

Parcel "A", as shown by the Plat of Survey recorded in Book 4172, at Page 404, in the land records of the Polk County Recorder.

AND, Parcel "B", as shown by the Plat of Survey recorded in Book 4172, at Page 405, in the land records of the Polk County Recorder,  
EXCEPT, the North 458.53 feet of the East 190.0 feet of the Southwest 1/4 of the Southeast 1/4 said Section 20, as recorded in the land records of the Polk County Recorder on June 5, 1998, in the Book 7942, at Page 146.

AND, the North 173.61 feet of the West 451.0 feet (except the West 162 feet thereof) of the Southwest 1/4 of the Southeast 1/4 of said Section 20, and the North 5.6 feet of the West 162 feet (except the West 40 feet thereof) of the Southwest 1/4 of the Southeast 1/4 of said Section 20.

**Alternate Description:** The Property may be also be described as follows:

The Southwest 1/4 of the Southeast 1/4 of Section 20, Township 78 North, Range 24 West of the 5<sup>th</sup> P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa, except the following tracts and parcels:

The East 125.0 feet of the West 175.0 feet of the North 146.0 feet of the South 183.0 feet of the Southwest 1/4 of the Southeast 1/4 of said Section 20, less a triangular portion thereof beginning at a point 70.0 feet East and 37.0 feet North of the Southwest corner of the Southwest 1/4 of the Southeast 1/4 of said Section 20; thence West 20.0 feet; thence North 16.0 feet; thence Southeast to the point of beginning, as recorded on July 27, 1998, in the Recorders Office of Polk County, Iowa, in Book 5913, at Page 042. (District/Parcel No. 120/07109-005-000 owned by City of Des Moines.)

AND, the North 322.2 feet of the West 451.0 feet (except the North 173.61 feet and except Street in the Southwest 1/4 of the Southeast 1/4 of said Section 20, as recorded on September 14, 1994, in the Recorders Office of Polk County, Iowa, in Book 7085, at Page 676. (District/Parcel No. 120/07109-001-001 owned by Hawkeye Bank.)

*( continued )*



AND, the North 458.53 feet of the East 190.0 feet of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  said Section 20, as recorded on June 5, 1998, in the Recorders Office of Polk County, Iowa, in Book 7942, at Page 146. (District/Parcel No. 120/07110-006-000 owned by B.F. W., Inc.)

AND, (Except the West 120.0 feet thereof) the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 20, as recorded on November 9, 1983, in the Recorders Office of Polk County, Iowa, in Book 5302, at Page 363, less road. (District/Parcel No. 120/07110-000-000 owned by Societa Stemma D'Italia Di Mutuo Soccorso, now known as the Society of Italian Americans.)

AND, The West 162.0 feet of the North 173.61 feet of the West 451.0 feet of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 20, (except the West 40.0 feet thereof taken for street purposes and except the North 5.6 feet thereof), and except public highways, as recorded on January 8, 2003, in the Recorders Office of Polk County, Iowa, in Book 9559, at Pages 806-808. (District/Parcel No. 120/7109-004-000 owned by AG Food and Gas Mart III, Inc.)

AND, public right-of-way of Fleur Drive and McKinley Avenue in the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 78 North Range 24 West of the 5<sup>th</sup> P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa.