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Polk County Iowa  
TIMOTHY J. BRIEN RECORDER  
File# 2006-00067193  
BK 11473 PG 573-578

Type of Document: Declaration of Covenants

Lawrence R. McDowell, Deputy Atty 400 Robert D. Ray, Des Moines, Ia. 50309  
Preparer Information: (Individuals Name, Street Address, City, Zip, Phone) (515) 283-4541

Taxpayer Information: (Individual/Company Name, Street Address, City, Zip, Phone)

City Clerk 400 Robert D. Ray, Des Moines, Ia 50309 (515) 283-4541  
Return Document to: (Individual/Company Name, Street Address, City, Zip, Phone)

Grantors:

Grantees:

Legal Description:

See page 2

Book & Page Reference:



Timothy J. Brien



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Upon recording return to:  
 City Clerk  
 400 Robert D. Ray Drive  
 Des Moines, IA 50309

Prepared by: Lawrence R. McDowell, Deputy City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309, (515)283-4541

RE: Lots 7 and 8, Block 12, Fort Des Moines an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa,

(herein referred to as the "Equitable Property").

### DECLARATION OF COVENANTS

Equitable, L.P., an Iowa Limited Partnership (hereinafter called "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 April 6, 2005, (hereinafter "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 Equitable Property in the Agreement, and more specifically described above.

Section 1. Background. A. The City of Des Moines is engaged in carrying out an urban renewal project known as the Metro Center Urban Renewal Project for the clearance, reconstruction, rehabilitation and renovation of slum and blighted areas in the City pursuant to the Iowa Urban Renewal Law. There has been prepared and approved by City a plan for the Project, consisting of the Urban Renewal Plan and amendments thereto, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as follows:

| <u>Action</u>               | <u>Date Adopted</u> | <u>Roll Call</u>     | <u>Book-Page</u>     |
|-----------------------------|---------------------|----------------------|----------------------|
| Adopted                     | 03/20/00            | 00-0788 &<br>00-0789 | 8491-645<br>8491-721 |
| 1st Amendment               | 06/26/00            | 00-1927              | 8534-178             |
| 2nd Amendment               | 11/06/00            | 00-4270              | 8637-725             |
| 3rd Amendment               | 12/04/00            | 00-4536              | 8659-119             |
| 4th Amendment               | 12/18/00            | 00-4679              | 8670-933             |
| 5th Amendment               | 10/22/01            | 01-3224              | 9055-830             |
| 6th Amendment               | 06/17/02            | 02-1596              | 9200-189             |
| 7th Amendment & Restatement | 07/28/03            | 03-1800              | 10072-230            |

(which plan, as so amended is hereinafter called the "Urban Renewal Plan").

B. City entered into the Agreement with Developer in the exercise of the City's powers under the Iowa Urban Renewal Law and for the purpose of furthering the Urban Renewal Plan.

C. Pursuant to the Agreement, Developer has undertaken to construct the rehabilitation, renovation and related improvements to the Equitable Property (the "Equitable Property Improvements") including improvements to commercial retail and office space within the first through tenth floors of the Equitable Property ("Commercial Component").

D. This Declaration is executed and filed with the Polk County Recorder by Developer in performance of its obligations under Section 54 of the Agreement.

Section 2. Duration. This Declaration and the covenants contained herein shall be in effect for a term commencing with the filing of this declaration with the Polk County Recorder and ending December 31 of the nineteenth (19th) calendar year following the calendar year in which the Certificate of Completion is issued for the Equitable Property Improvements Commercial Component pursuant to Article 2 of the Agreement.

Section 3. Covenants and Restrictions on Use; Covenant to Maintain. The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Equitable Property and the Improvements thereon, or any part thereof, that the Developer and such successors and assigns, shall:

- (a) undertake the development of the Equitable Property by constructing the Equitable Property Improvements thereon in accordance with the terms of the Agreement and all applicable State and City laws and regulations.
- (b) use the Equitable Property in conformity with the land use requirements of the Urban Renewal Plan.
- (c) 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 Equitable Property or the Improvements 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 Equitable Property and the Improvements thereon.
- (d) comply with all federal, State of Iowa and local laws prohibiting discrimination in the employment of persons upon the Equitable Property.

- (e) maintain the Equitable Property Commercial Component (including the common elements in the Equitable Property in which the owner(s) of the Commercial Component have an interest) and all adjacent streetscape and sidewalk improvements in good condition and repair in substantial conformance with the Construction Plans approved in accordance with Section 24 of the Agreement and in the event of fire or other casualty loss to the Equitable Property Commercial Component (and common elements) commence within ninety (90) days and diligently pursue to completion repairs to restore the Equitable Property Commercial Component (and common elements) to its former condition in substantial conformance with the Construction Plans.
- (f) pay when due all taxes and assessments, general or special, levied upon or assessed against the Equitable Property Commercial Component.
- (g) insure the Equitable Property Commercial Component (including all common elements in the Equitable Property in which the owner(s) of the Commercial Component have an interest) in accordance with the terms set forth in Subsection 52(7) of the Agreement and, in the event of casualty or destruction of any part of the Equitable Property Commercial Component (and common elements), promptly commence repairing and restoring the Equitable Property Commercial Component (and common elements) in accordance with the terms set forth in Subsection 52(7) of the Agreement.
- (h) not transfer, assign, convey or lease any portion of the Equitable Property in violation of the terms set forth in Subsection 52(8) of the Agreement.
- (i) not permit any encumbrance or lien upon any portion of the Equitable Property in violation of the terms set forth in Subsection 52(9) of the Agreement.
- (j) maintain the Commercial Component of the Equitable Property as commercial office or retail space and not permit the conversion of any portion of the Commercial Component to residential condominium units or to a residential property classification.

Section 4. Situs for Taxation. Developer agrees for itself, its successors and assigns, and every successor in interest to the Equitable Property and the Improvements thereon, or any part thereof, that Developer and such successors and assigns shall not, during the term of this Declaration, cause or voluntarily permit any part of the Equitable 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 Metro Center Urban Renewal Project Area in its entirety or apply for a deferral of property tax on the Equitable Property pursuant to any present or future statute or ordinance.

Section 5. Covenants; Binding Upon Successors in Interest. A. 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 the Developer, its successors and assigns and every successor in interest to the Equitable Property and the Improvements thereon, or any part thereof or any interest therein, and any party in possession or occupancy of the Equitable Property and the Improvements, or any part thereof.

B. The agreements and covenants shall be binding on the Developer itself, each successor in interest to the Equitable Property and the 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 Equitable Property or the Improvements thereon or part thereof.

Section 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, 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.

Section 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 Equitable Property or Improvements thereon, a provision identifying the terms, conditions, restrictions and requirements of the agreements and covenants imposed pursuant to this Declaration upon the Equitable Property and Improvements and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of such agreements and 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 Sections 3 and 4 above, against Developer's successors and assigns to any interest in the Equitable Property and Improvements.

Section 8. Warranty of Title. Developer does hereby covenant with City that Developer holds the Equitable Property by title in fee simple, subject only to liens and encumbrances which are subordinate to this Declaration; that Developer has good and lawful authority to convey the same; and Developer covenants to WARRANT AND DEFEND the Equitable Property against the lawful claims of all persons whomsoever.

SIGNED this 15<sup>th</sup> day of April, 2005.

EQUITABLE, L.P.

BY: Equitable GP, L.L.C., general partner

BY: [Signature]  
a General Partner Bob J. Knapp

STATE OF IOWA )  
                  ) ss:  
COUNTY OF POLK )

On this 15<sup>th</sup> day of April, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared Bob J. Knapp to me personally known, who being by me duly sworn, did say that that person is the General Partner of Equitable GP, L.L.C., the General Partner of Equitable, L.P., an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of said Equitable GP, L.L.C. as General Partner of Equitable, L.P., an Iowa limited partnership, by authority of the Company's managers; and that said Diane Freeman acknowledged the execution of said instrument to be the voluntary act and deed of said Equitable GP, L.L.C. and the limited partnership by it and by him voluntarily executed.



[Signature]  
Notary Public in the State of Iowa

**ACCEPTANCE:**

I, Diane Rau, City Clerk of the City of Des Moines, Iowa, do hereby certify that the foregoing Declaration of Covenants was duly approved and accepted by the City Council of the said City of Des Moines by Resolution and Roll Call No. 05-814, passed on the 6<sup>th</sup> day of April, 2005, and this certificate is made pursuant to authority contained in said Resolution.

[Signature]  
Diane Rau, City Clerk  
City of Des Moines, Iowa