

**DECLARATION OF PROTECTIVE COVENANTS
FOR THE
MARSHALLTOWN GATEWAY CENTRE
c/o CONSUMERS DEVELOPMENT, LLC
2075 MARSHALLTOWN BLVD.
MARSHALLTOWN, IA 50158**

This Declaration of protective covenants, for the Marshalltown Gateway Centre (this Declaration”) is made as of the _____ day of _____, 2005, by Consumers Development LLC, an Iowa Limited Liability Company.

**ARTICLE I
PROPERTY AND PERSONS AFFECTED**

The real property which is subject to these protective covenants as of the date hereof is located in the County of Marshall, State of Iowa, and is more particularly shown on the plats attached hereto as Exhibit A and incorporated herein by reference. Consumers Development, LLC warrants that it is the owner of the real property described and shown on Exhibit A. Consumers Development, LLC hereby declares that said real property described is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration.

All persons, corporations and other entities, their successors and assigns, who now own or shall hereinafter acquire an interest in the real property subject to this Declaration, shall be taken to hold and agree and covenant with each other to conform to and observe the following covenants, conditions, restrictions and other terms of this Declaration.

**ARTICLE II
DEFINITIONS**

“Building Site” or “Lot” shall mean any parcel of land subject to this Declaration.

“Consumers” or “Consumers Development” shall mean Consumers Development, LLC, an Iowa limited liability company.

“Improvements” shall be defined as any change from the natural condition of the land of any type or kind, including without limitation the following: a building or buildings, roads, driveways, parking areas, loading areas, fences, walls, signs, lawns and landscaping.

“Business Park” shall mean the property platted in the 2075 Marshalltown Blvd. Addition, as shown on Exhibit A hereof.

“*Owner*” shall mean the person, firm or corporation, or other entity, owning fee simple title to a Building Site.

“*County*” shall mean Marshall County.

“*Common Area*” shall mean all real property (including the improvements thereon) owned by Consumers Development for the common use and enjoyment of the Owners. The Common Area shall be all portions of the Business Park which are not included within a Lot (including streets, paving, sewers and utilities located in the Common Area) and not included within property owned by a municipality or municipal agency.

“*Association*” shall mean and refer to the Marshalltown Gateway Centre Owners Association, its successors and assigns.

ARTICLE III **ASSOCIATION CREATION AND MEMBERSHIP**

Section 1. Association Created.

There is formed an Iowa Not for Profit Corporation known as the Marshalltown Gateway Centre Owners’ Association whose purpose shall be to ensure the continued provision of services and facilities of common benefit and to enforce the covenants and design standards created by this document.

Section 2. Association Membership.

Every Owner in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot, which is subject to assessment, by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE IV **PURPOSE**

The purpose of the protective covenants in this Declaration is to ensure proper development and use of the Business Park, to protect the Owner of each Building Site against any improper development and use of surrounding Building Sites, to preserve, enhance and protect the value, desirability and attractiveness of all the Business Park, and in general to provide adequately for a high quality of development within the Business Park. It is intended that the development will be sensitive to energy efficiency and use of environmentally sound development practices. To that end, certain restrictions are placed on the development of the lots in the Business Park to ensure proper consideration of use of energy efficient technologies and building practices, as well as proper site development design and materials.

ARTICLE V
APPROVAL OF PLANS

Plans and specifications for all Improvements shall be submitted to the County for review and approval by the Planning & Zoning Commission and/or administrative staff of the County as required by the law for compliance with the codes and ordinances of the County of Marshall and the State of Iowa, as applicable.

ARTICLE VI
PRIMARY INTENDED USE

The Business Park may be used for any light industrial and/or commercial business in the areas of life sciences, advanced manufacturing or information services.

In addition to the above-referenced uses, the County and Consumers Development shall have the right to construct and maintain such public utility systems and improvements as are necessary for the Business Park, including without limitation streets, water storage and distribution, sewage collection and treatment and storm water conveyance and detention facilities, so long as such utility systems and improvements will have no adverse effect on the operation of any facility in the Business Park. The park is zoned C-1 General Commercial.

ARTICLE VII
GENERAL RESTRICTIONS

A priority for the development is to be a welcoming gateway to Marshalltown. Having an aesthetically pleasing development will go a long way in accomplishing this objective. Therefore, in the Business Park all Building Sites and Improvements thereon shall be subject to the following restrictions:

1. Replatting or Subdividing. The Owner of any Lot shall never at any time, replat, subdivide, or resubdivide any Lot into a smaller lot or parcel or in any other manner change this plat without first obtaining the written approval of Consumers Development, which approval shall not be unreasonably withheld. However, a Lot may be divided if the purpose is to permit the addition of property to an adjoining Lot.
2. Operations Within Enclosed Buildings. All operations and activities shall be conducted or maintained within completely enclosed buildings except:
 - a. Off-street parking and loading spaces.
 - b. Employee recreational facilities.
 - c. Outdoor exterior storage in accordance with the terms of this Declaration and any applicable ordinance.
3. Time for Construction/Repurchase. Any purchaser of a Lot in this Business Park or a purchaser's successor in interest shall begin good faith construction of a permanent building within two (2) years from the date title is transferred to the purchaser. If such good faith construction is not started within said period, Consumers Development shall have the right to purchase the real estate for the purchase price paid by the purchaser and the purchaser or the purchaser's successor in interest shall execute all instruments necessary to convey the Lot to Consumers Development. Consumers Development may agree in writing to extend the time during which construction is to commence upon written application of the purchaser or the purchaser's successor in interest.

4. Signs. Signs will be regulated by Article XV of the Marshall County Zoning Ordinance. There may be one sign which identifies the occupant of a Lot oriented to the main entrance to the Lot or to the building. No sign shall exceed 100 square feet in area unless approved by Consumers Development. Directional message signs may also be permitted. No off-premise signs shall be allowed on a lot, except for a sign that identifies the development or a business directory sign approved by Consumers Development. Temporary signs during construction are permitted and must be removed within 30 days after substantial completion of the project.
5. Retention of existing vegetation. To the extent possible, existing tree in excess of 4” caliper shall be retained and adequately protected during construction of site improvements.
6. Outside Storage. Outside open storage is allowed in the side or rear yard when the area is completely screened from view from all sides by means of an opaque fence or wall, which shall be not greater than eight (8) feet high. Such storage and screening shall be confined to locations in the rear or at the side of said building and behind the front line of said building as extended and shall be constructed within the applicable setback lines.
7. Maintenance of Undeveloped Areas. That portion of each Lot that is not improved with buildings and facilities for the operation of the business or industry thereon, access and parking facilities, loading facilities, sidewalks, landscaped or lawn areas, shall be seeded to a ground cover planting which grows to a height not to exceed approximately ten (10) inches, and at all times shall be properly maintained. Cultivated crops, limited to alfalfa, rye, and oats may be grown on an undeveloped Lot. Within two years following the occupancy of the first building on a Lot, such unimproved areas shall be improved with buildings, hard surface improvements, landscaping or lawn.
8. Open Space and Landscaping. Open space features are defined as those exterior areas and developed features of the Lot that add to its functionality and its aesthetic appearance. These include:
 - Landscaped space containing lawn areas and plantings
 - Paved hard-surfaced pedestrian areas such as walkways, plazas, entryways and courtyards
 - Surface storm water detention areas not otherwise used for building related or vehicle related purposes
 - Employee relaxation and recreation areas
 - Other non-building and non-vehicular related space.
 - a. Plant Materials: The open space area of each Lot shall be planted with permanent lawn and ground covers, shrubs and trees. It is the intent of these covenants that the development of required open spaces shall reflect a high quality of environmental design. The following provisions shall apply to each Lot:
 - 1). The area extending 10 feet back from any adjacent street right-of-way line the entire width of the Lot shall be developed as a landscaped "parkway". Within this parkway drives may cross but no parking shall be allowed, and earthen berms or shrubs shall be installed at least 3 feet in height to obscure parking areas located in the front yard. One tree shall be installed for every 40 feet of the landscaped “parkway” and 5 shrubs shall be installed for every 1,000 square feet of such “parkway”.
 - 2). All landscape materials shall be appropriate for their intended use at maturity and shall be fully hardy.
 - 3). The installed plant materials shall be sufficient size and quality to survive the growing conditions of the Lot and shall be expected to produce the

desired functional and aesthetic qualities within three years of the time of planting. Minimum plant material sizes at the time of installation shall be 2" caliper for deciduous overstory trees, 1-1/2" caliper for ornamental deciduous trees and 6' in height for coniferous trees.

- 4). Landscaping shall be provided within and around the perimeter of all parking lots, except adjacent to buildings. A minimum of 1 tree and 5 shrubs per 500 square feet of landscaped area internal to and around the perimeter of the parking lot shall be provided. No less than 5% of the area internal to and adjacent to the parking lot shall be landscaped.
- 5). The Lot Owner is required to replant any and all plant materials that have died due to any cause during the effective period of these covenants.
9. Lot Coverage. The maximum floor area ratio, calculated by dividing the floor area of the multiple floors of all buildings on the lot by the lot area shall not exceed .5. No more than 75% of any lot shall be covered by impervious materials.
10. Utility Locations. All electrical, telephone, cable and other similar utility lines serving the principal building, secondary building, and other site features of each lot shall be located underground.
11. Easements: Easements may be used for the construction, installation, maintenance and location of utilities, including, without limitation, underground electric or communication cables, storm and sanitary sewers, natural gas distribution pipelines, water or heat, including mains and service pipes. The purchasers of Lots within the Industrial Park shall, at their own cost and expense, keep and preserve that portion of the easement and right-of-way within their property lines at all times in good condition of repair and maintenance.
12. Maintenance of Developed Areas. All sidewalks, driveways, parking and/or loading areas shall be constructed of hard surfaced, dust-free, stabilized materials. All landscaping shall be properly maintained. Parking areas shall be likewise properly maintained.
13. Electric Service. Electric service to exterior lighting shall be underground, unless approved in writing by Consumers Development. All lighting installations shall be fully shielded and oriented so that no glare is directed onto adjacent properties, public streets, or upward from the light. Parking lot lighting shall be maintained at a minimum of .5 footcandles and a maximum average of 3.5 footcandles with a 5:1 maximum uniformity ratio. Driveway lighting shall be maintained at a minimum of .25 footcandles and a maximum average of 2 footcandles with a 5:1 maximum uniformity ratio. Exterior light poles and fixtures installed after July 1, 2004 are to be the same as the street lighting poles and fixtures for the entire development. Specifications for these can be obtained from Consumers Development. For security installations, when adequate need can be demonstrated, lighting exceeding the footcandle levels listed above may be approved by Consumers Development or the Design Review Board.
14. Waste. No garbage or decomposable animal or vegetable waste shall be placed in storage upon any Lot or tract except for short periods of time in tightly covered metal or plastic containers. All of the refuse shall be placed in containers or enclosures in a manner not constituting a nuisance by reason of wind, litter, smell, disorderly appearance, or abnormal fire hazards. Each Owner shall be responsible for the removal of garbage and other refuse from its Lot at least once a week.
15. Fences. All fencing or screening, for security or for other purposes, shall be attractive in appearance and fencing shall be of all metal industrial type which is factory fabricated and finished or nonferrous material. No fence, masonry wall, hedge, or mass planting shall be permitted to extend beyond the front yard building setback line. Fencing will be allowed along the side and rear yards.

16. Docks. Truck loading docks, if required, shall be provided in such locations at the rear of buildings and in such quantity to permit trucks to load and unload or to wait to do so without hindering traffic upon public or park streets. No curb cut or entrance shall be constructed within 75 feet of the nearest intersection of city streets. The radii of curb cuts shall not be less than 25 feet.
17. Parking. The Owner of any Lot shall provide for adequate stabilized, surfaced with all-weather dust-free material, parking for employees in conformance with the County zoning ordinance. The parking areas shall be located upon the Owner Lot. Adequate off-street parking spaces for visitors shall also be provided upon said Lot. No on-street parking is allowed. Bike racks shall be installed for each use.
18. Storm Water and Entrances. The storm water flow from any Lot after development shall not exceed the historic undeveloped flows. Individual site grading and paving plans will be developed to assure proper control of storm water. The entrance drive to each lot shall be constructed to ensure that storm water does not flow onto the 242nd Street pavement. This shall be done by extending the first twelve and one half feet (12.5') of the driveway at a negative four percent (-4%) grade so that the driveway is six inches (6") below the pavement at twelve and one half feet (12.5') from the edge of the 242nd Street pavement. Adequate provision shall be made for conveyance of storm water. Typical driveway sections shall be shown on the plans and submitted to the County for approval prior to construction.
19. Easement. Easements may be used for the construction, installation, maintenance and location of utilities, including without limitation underground electric or communication cables, storm sewage or sanitation sewers, pipe line for supplying gas, water or heat, including mains and service pipes. The purchasers of Lots within the Business Park shall at their own cost and expense keep and preserve that portion of the easement and right-of-way within their property lines at all times in good condition of repair and maintenance.
20. Sewer Discharge. The Lot Owner shall be responsible to provide for sewer and water service on their lot. The Business Park will provide sewer and water to the front line of each site. Installation of the lines to the building(s) is the responsibility of the Owner, and subject to the approval by Consumers Development and/or Central Iowa Rural Water Association.
21. Nuisances and Hazards. No occupant of the Business Park shall manufacture, process, produce, handle or store any product or item or engage in any activity which shall at any time produce or possess the potential to produce a nuisance or hazard, beyond the limits of the Lot, to the public health, safety, or welfare. All users shall operate in conformance with the limitations set forth in Marshall County, State of Iowa, laws and rules, and federal laws and regulations, whichever is more restrictive.
22. General Restrictions. No noxious or offensive trade or activity shall be carried on upon a Lot which constitutes a nuisance under local ordinances and/or state laws, due to unsightliness, excessive vibration, glare, heat, noise, fire or explosive (not including ordinary household items) hazards, dust, dirt, fly ash, obnoxious odors, noxious, toxic or corrosive fumes or gases, smoke, or otherwise.
23. Sidewalks. Each Lot Owner shall construct, or shall cause to be constructed, a sidewalk adjacent to property line adjacent to each street frontage. The sidewalk width shall be 4 feet. Sidewalk installation and maintenance shall be the responsibility of the Lot owner.
24. Energy sources. All uses shall obtain at least 10% of needed energy from renewable power sources, or shall generate at least 10% of needed energy from renewable sources. All buildings shall be designed to meet the Energy Star requirements.

25. Prohibited uses: The following uses shall be prohibited. Auto wrecking; salvage yards; used materials yards; storage or baling of waste or scrap paper, rags, scrap metals, bottles or junk; residential; incineration; processing of animals; storage, handling, treatment or disposition of hazardous, toxic or radioactive wastes, except in minimal quantities involved in a manufacturing process and stored, handled, used and disposed of in accordance with applicable laws; and agricultural use involving the keeping or maintaining of livestock on the Lot, except uses which:
- a. Contain the livestock and the livestock feed and waste within enclosed buildings, which building shall contain filters, scrubbers and other measures necessary to eliminate odors, dust and other emissions.

ARTICLE VIII **ARCHITECTURAL CONTROL**

It is recommended that all buildings be designed, constructed, and managed in a way that includes as many energy conserving features as possible. While these covenants do not require the Owner to include use of any specific methods or technologies in the buildings, the Owner is encouraged to thoroughly explore the feasibility of incorporating many of the following features or others that may become appropriate:

- Orientation of buildings to maximize the use of passive solar heating and daylighting.
- Earth sheltering where possible.
- Earth-source (geothermal) heating and cooling systems or high efficiency cold-climate air-source heat pumps.
- Programmable thermostats and energy controls systems.
- Superior insulation products such as extruded polystyrene board, sprayed polyurethane foam (soy based preferred), blown cellulose, etc.
- Low E windows.
- Insulated entry and overhead doors.
- Daylighting harvesting systems using dimming ballasts and automatic controls.
- Occupancy sensors.
- Low V.O.C. paints and finishes.
- Indoor air quality systems for control of moisture, carbon monoxide, radon, fresh air, etc.
- Motion triggered plumbing fixtures.
- Preferential use of green building products in an effort to reduce the use of plastics such as copper, stainless steel, cast iron, aluminum, wood sheathing, wood or aluminum windows, clay drainage pipes, recycled flooring materials and electrical conduit.
- Rainwater harvesting and detention systems.

The review of plans by Consumers Development and the Design Review Board will include an evaluation of the extent to which environmental and energy saving technologies have been used in the design. Low interest loan funds may be made available for projects that utilize the products and technologies enumerated above.

The use of appropriate exterior building materials shall be required to enhance the overall appearance of the Marshalltown Gateway Centre. One or more of the following durable, high quality materials shall be used as the construction material of all exterior building walls or

structures: brick, stone, concrete panels, textured concrete block, fascia glass, architectural metal, exterior insulating and finish systems (EIFS), or wood, any and all in neutral colors.

All visually exposed roof and wall supported vents, ducts, pipes, mechanical equipment of any kind, skylights, antennas, and any other piece of equipment attached to the building shall be screened, designed and constructed so as to provide a neat and orderly appearance. The colors of such screening material of exposed equipment shall be compatible with the building colors adjacent to the equipment.

All such plans for the construction and design of exterior building walls and/or structures shall first be submitted to Consumers Development for its review and written approval, which shall not unreasonably be withheld. At such time that 75 percent of the Lots are sold by Consumers Development, the Association shall assume responsibility for the review and approval of plans and specifications for such Improvements from Consumers Development. At that time, the Association shall assign a Design Review Board (DRB) whose task shall be the review and approval of plans and specifications for all Improvements. A majority vote of the DRB is needed for approval.

Exterior storage, as governed by the Marshall County Zoning Ordinance, is allowed as set forth in this Declaration. Variances to the storage requirements may be applied for under the procedure specified in the Zoning Ordinance, after first obtaining approval of Consumers Development and/or the Association as applicable, under the terms of Article VII hereof.

ARTICLE IX **GENERAL PROVISIONS**

It shall be the responsibility of the Owner to maintain and repair public sidewalk surfaces on or adjacent to the Owner's Lot and to keep the same reasonably free and clear of ice, snow, defects or nuisances.

The Owner of any Lot, vacant or improved, shall maintain the Lot at all times in clean, safe, orderly and sanitary condition. Plant material and lawn areas shall be regularly maintained in a manner consistent with the growing requirements and characteristics of each planted species.

ARTICLE X **ADDITION OF TERRITORY**

If Consumers Development acquires land adjoining or adjacent to the Business Park within ¼ mile of the outside boundary of the Business Park for development of industrial uses, then this Declaration shall apply to the acquired land in the same manner as if it were originally covered by this Declaration, and thereafter the rights and responsibilities of the Owner(s) of the added land shall be the same as in the case of the original land. Upon such acquisition, a Notice of Addition shall be recorded in the Marshall County Recorder's Office.

ARTICLE XI
TERM

The covenants and restrictions of this Declaration shall run with the land and bind the same, and shall inure to the benefit of and be enforceable by Consumers Development, or the Owners of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of 21 years from the date this Declaration is recorded. Consumers Development or any Owner may (prior to the expiration of these covenants) file a verified claim pursuant to Iowa Code Section 614.24 to extend these covenants for an additional 21 years.

ARTICLE XII
AMENDMENTS

This Declaration may be amended by an instrument signed by (i) at least 75 percent of the Owners of Lots in the Business Park, and (ii) Owners of not less than 75 percent of the Net Acres in the Business Park, provided, however, that under no circumstances shall any one person or entity be entitled to unilaterally amend this Declaration. The term "Net Acres" shall mean all of the Business Park which is not dedicated to public use. The acreage shall be inclusive of additional territory as may be added in accordance with Article IX above. Any instrument amending, modifying or canceling this Declaration shall be in writing and shall be properly recorded before it is effective. Notwithstanding provisions hereof to the contrary, until Consumers Development has sold all Lots in the Business Park, it may amend this Declaration without the consent or approval of any other person or entity.

ARTICLE XIII
ENFORCEMENT AND INVALIDATION

Any Owner may enforce the covenants in this Declaration by proceedings at law or in equity and such prevailing Owner is entitled to reimbursement of reasonable attorney fees.

Invalidation of any one of or a portion of the provisions of this Declaration by court judgment or order shall neither affect nor invalidate any other provision, and the same shall remain in full force and effect. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Any firm, person, corporation or other entity which shall succeed to title of any Lot through foreclosure of a mortgage or other security instrument or through other legal proceedings, shall succeed to the rights, duties, and liabilities of the previous Owner as herein provided.

ARTICLE XIV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Business Park, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as

hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made.

Section 2. Purpose of Assessments. The assessments levied by and for the Association, shall be used exclusively for the improvement, insurance coverage and maintenance of the Common Area.

Section 3. Annual Assessment. Until Consumers Development no longer owns any real property located in the Business Park, it shall establish the annual assessments. The initial annual assessment effective on this date shall be \$200.00 until changed hereunder.

Section 4. Special Assessments. In addition to the annual assessments authorized above, Consumers Development may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

Section 5. Uniform Rate of Assessment. Annual assessments and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Consumers Development shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by Consumers Development.

Section 7. Insurance and Insurance Assessment. Consumers Development may procure and maintain such liability coverage as deemed appropriate and shall include the cost thereof in the annual assessments.

It is expressly acknowledged and agreed by each Owner upon acceptance of a deed to a lot, that this article is for the mutual benefit of all Owners of lots. It is necessary for the protection of all said Owners. Nothing herein shall preclude any Owner from obtaining whatever additional insurance they deem necessary.

Section 8. Effect of Nonpayment of Assessments: Remedies. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by Consumers Development and shall constitute an automatic lien against the Lot in question. Consumers Development may file a notice of lien. Consumers Development may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of a Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior

to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

CONSUMERS DEVELOPMENT, LLC

Mark Tinnermeier, President

Daniel L. Dadisman, Secretary-Treasurer

STATE OF IOWA

COUNTY OF MARSHALL, ss:

On this _____, before me, a Notary Public in and for the said State, personally appeared , _____ to me personally known, who being by me duly sworn did say that that person is _____ of said limited liability company, that no seal has been procured by said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Notary Public in and for the State of Iowa

My Commission Expires:
