

**FIRST AMENDED DECLARATION OF PROTECTIVE COVENANTS  
FOR THE  
MARSHALLTOWN GATEWAY CENTRE  
c/o CONSUMERS DEVELOPMENT, L.L.C.  
2074 242<sup>nd</sup> STREET  
MARSHALLTOWN, IA 50158**

This Declaration of protective covenants, for the Marshalltown Gateway Centre (this Declaration”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Consumers Development L.L.C., 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, L.L.C. warrants that it is the owner of the real property described and shown on Exhibit A. Consumers Development, LLC warrants that it is the Owner of such described real property. 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, L.L.C., 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 2074 242<sup>nd</sup> Street 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.

“*Collective Lot Owners*” shall mean the collection of Lot Owners and their successors in place when Consumers Development has sold 75 percent of the Lots subject to this Declaration.

### **ARTICLE III** **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 IV** **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 V** **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, warehousing, distribution or information services.

In addition to the above-referenced uses, the County and Consumers Development, or the Collective Lot Owners, if applicable, 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 VI** **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, or the Collective Lot Owners, if applicable, 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 two signs which identify the occupant of a Lot, one of which is 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, or the Collective Lot Owners, if applicable. 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, or the Collective Lot Owners, if applicable. 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 trees 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 driveways may cross but no parking shall be allowed.
    - 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.
    - 4). Landscaping shall be provided within and around the perimeter of all parking lots, except adjacent to buildings.
    - 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.
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, or the Collective Lot Owners, if applicable. 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. 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.
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.
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 242<sup>nd</sup> 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 242<sup>nd</sup> 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. 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, or the Collective Lot Owners, if applicable, and/or Central Iowa Rural Water Association.
20. 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 the Marshall County, State of Iowa, laws and rules, and federal laws and regulations, whichever is more restrictive. This Section is not to be construed in such a way as to prevent the lawful storage and distribution of farm chemicals on and from the property. Said storage and distribution shall be in full compliance with all state and federal laws and standard industry practice for the storage and distribution of said chemicals.

21. 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.
22. Energy Sources. It is encouraged that all users obtain at least 10 percent of needed energy from renewable power sources, or shall generate at least 10 percent of needed energy from renewable sources. It is encouraged that all buildings shall be designed to meet the Energy Star<sup>®</sup> requirements.
23. 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.

## **ARTICLE VII** **ARCHITECTURE 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:

- Earth-sourced (geothermal) heating and cooling
- Light dimming ballasts that accommodate for use of day lighting technologies
- Occupancy sensing automatic light switches
- Motion triggered water faucet and toilet facilities
- Programmable thermostats and computerized energy monitoring systems
- “High E” energy efficient windows and windows that make use of passive solar energy
- Superior insulation using environmentally safe products such as cellulose, cork and foamed glass
- Carbon monoxide monitoring and alarm systems and indoor air quality technologies
- Orientation and design of buildings to maximize use of day lighting and passive solar energy
- Rainwater harvesting and detention systems

The review of plans by Consumers Development, or the Collective Lot Owners, if applicable, 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 finish systems (EIFS), or wood, any and all in a white or neutral color.

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 Collective Lot Owners shall assume responsibility for the review and approval of plans and specifications for such Improvements.

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 Collective Lot Owners as applicable, under the terms of Article VI hereof.

## **ARTICLE VIII** **GENERAL PROVISIONS**

It shall be the responsibility of the Owner to maintain and repair any 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 IX** **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 X**  
**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 XI**  
**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. 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 XII**  
**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 XIII**  
**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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association special assessments for maintenance and/or 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. Special Assessments. In addition to the annual assessments authorized above, Consumers Development, or the Collective Lot Owners, if applicable, 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 3. Uniform Rate of Assessment. Special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 4. Insurance and Insurance Assessment. Consumers Development, or the Collective Lot Owners, if applicable, may procure and maintain such liability coverage as deemed appropriate and shall include the cost thereof as a special assessment.

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 5. 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, or the Collective Lot Owners, if applicable, and shall constitute an automatic lien against the Lot in question. Consumers Development, or the Collective Lot Owners, if applicable, may file a notice of lien. Consumers Development, or the Collective Lot Owners, if applicable, 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 6. 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, L.L.C.

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President

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Secretary

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:

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