

1/DC  
JW

FILED FOR RECORD  
POLK COUNTY, IOWA

Exhibit "C"

Return to CITY CLERK-DES MOINES

400 East First Street  
DES MOINES, IA 50309-1891  
(515) 283-4209

of Date JUN 14 A 7:42.2  
TIMOTHY J. BRIEN  
RECORDER

INST # 110118  
RECORDING FEE 3100  
AUDITOR FEE \_\_\_\_\_

Prepared by: Roger K. Brown, Assistant City Attorney, 400 E. First St., Des Moines, IA 50309 515/283-4541

## DECLARATION OF COVENANT STIPULATING VALUE

**Re: Tract A:**

The East 51.0 feet of Lot 9 and the West 12.0 feet of Lot 8, Block "B", WEST AND BURTON'S ADDITION, an Official Plat; all the vacated East/West Alley right-of-way lying South of and adjoining the East 51.0 feet of said Lot 9 and the West 12.0 feet of said Lot 8; and, Lot 1, HARDING ROAD PLACE, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

**Tract B (includes Tract A):**

The East 51.0 feet of Lot 9, the West 22.0 feet and the North 10.0 feet of Lot 8, and the North 10.0 feet of Lot 7, Block "B", WEST AND BURTON'S ADDITION, an Official Plat; all the vacated East/West alley right-of-way lying South of and adjoining the East 51.0 feet of said Lot 9 and the West 22.0 feet of said Lot 8; and, Lot 1, the West 14.0 feet and the North 10.0 feet of Lot 2, and the North 10.0 feet of Lot 3, HARDING ROAD PLACE, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

This DECLARATION OF COVENANT is made and entered into as of this 19<sup>th</sup> day of April, 1999, by and between THE CITY OF DES MOINES, IOWA, a municipal corporation (hereinafter "City"), and THE THOMPSON TRUST.

WHEREAS, The Thompson Trust desires to immediately purchase from City the vacated East/West alley extending from Martin Luther King Jr. Parkway to 19th Street between Ingersoll Avenue and High Street; and,

WHEREAS, the City desires to later purchase from The Thompson Trust a portion of the land adjoining the East right-of-way line of Martin Luther King Jr. Parkway between Ingersoll Avenue and High Street; and,

WHEREAS, the parties have agreed that as additional consideration for the immediate sale of the alley right-of-way to The Thompson Trust, The Thompson Trust shall stipulate and agree to a price for which the City may purchase fee title to all or any portions of Tract A and a *Temporary Easement for Backslope Adjustment* upon all or any portions of Tract B described above;

NOW THEREFORE, The Thompson Trust and the City of Des Moines, Iowa, hereby stipulate, covenant and agree as follows:

BK8238PG787

1. Stipulation of Value - Fee Title. The Thompson Trust hereby stipulates and agrees that if:

- i) The City of Des Moines makes a written offer by July 1, 2000, to purchase all or any portion of Tract A, with closing and transfer of possession to occur on November 1, 2000, or such other date as may be agreed upon by the parties; or,
- ii) If such an offer is timely made by City and is rejected by The Thompson Trust, and the City thereafter promptly commences action in the district court to condemn all or such portion of Tract A;

then, the value of fee simple title in such property for the purpose of such sale or condemnation shall be as follows:

- i) \$7.65 per square foot for that part of Tract A north of the vacated alley.
- ii) \$4.00 per square foot for that part of Tract A within the vacated alley.
- iii) \$10.93 per square foot for that part of Tract A south of the vacated alley.

2. Stipulation of Value - Easement. A. The Thompson Trust hereby stipulates and agrees that if:

- i) The City of Des Moines makes a written offer by July 1, 2000, to purchase a *Temporary Easement for Backslope Adjustment* upon all or any portion of Tract B, with closing to occur on November 1, 2000, or such other date as may be agreed upon by the parties; or,
- ii) If such an offer is timely made by City and is rejected by The Thompson Trust, and the City thereafter promptly commences action in the district court to condemn a *Temporary Easement for Backslope Adjustment* upon all or such portion of Tract B;

then, the value of such easement in such property for the purpose of such sale or condemnation shall be One Hundred Dollars (\$100.00). However, no part of such easement shall extend under any building.

B. The *Temporary Easement for Backslope Adjustment* shall be in effect for the duration of the work on the planned improvements to Martin Luther King Jr. Parkway. In the exercise of the *Temporary Easement for Backslope Adjustment* the City or its assigns shall promptly restore any improvements within the easement area to substantially their condition prior to commencement of such work.

3. Agreed Value Inclusive of All Interests. The value established above for the acquisition of interests in Tracts A and B is and shall be inclusive of all the following interests and damages:

- The value of any improvements thereon constructed by The Thompson Trust, its successors and assigns;
- Any damage(s) to the remaining property owned by The Thompson Trust, its successors and assigns, caused by the severance of such property from the remainder;
- Any relocation expense and claims for loss of business

BK 8238 PG 788

resulting from the severance of such property from the remainder.

4. Early Closing. The parties acknowledge that the property is subject to leasehold interests which extend to August 31, 2000. The City may elect to close on the purchase prior to the date specified in paragraphs 1 and 2, above, but in such event City shall accept the property subject to the outstanding leasehold interests. Any rents paid or payable for any such leasehold shall be prorated to the date of closing. The Thompson Trust shall remain responsible for the payment of any deposit or other security due such tenants upon expiration of their leasehold interest.

5. Warranty of Title. The Thompson Trust hereby represents and warrants it holds fee simple title to Parcels A and B, subject only to leasehold interests which will expire prior to September 1, 2000, and utility easements of record; and that it has all authority necessary to enter into this Covenant.

6. Liquidated Damages. In the event that:

- i) the City offers to purchase fee title to all or any portions of Tract A, or to purchase a *Temporary Easement for Backslope Adjustment* upon all or any portions of Tract B in conformance with this Covenant;
- ii) The Thompson Trust refuses such offer;
- iii) the City subsequently condemns such property by exercise of its power of eminent domain; and,
- iv) the total amount finally allowed the condemnees in such condemnation proceeding for the taking of the property and the interests in the property identified in paragraph 3, above, exceeds the value established by this Covenant for such taking and interests;

then, The Thompson Trust shall immediately reimburse City for such excess. Such reimbursement shall constitute liquidated damages for the breach of this Covenant.

7. NOTICE. Notice as provided for in this Covenant to the City shall be deemed sufficient if sent by certified mail with return receipt requested to the City Manager, City of Des Moines, City Hall, 400 East First Street, Des Moines, Iowa 50309-1891. Notice as provided for in this Covenant to The Thompson Trust shall be deemed sufficient if sent by certified mail with return receipt requested to Thompson Trust, Attn: Theresa Loffreddo, Hubbell Building, 904 Walnut Street, Suite 900, Des Moines, Iowa 50309-3574. Either party may change the address for receipt of notice by providing notice of such change to the other.

8. Successors and Assigns. This Covenant shall be binding upon The Thompson Trust and its successors and assigns. The City may assign its interest under this Covenant to the State of Iowa and/or the Iowa Department of Transportation.

9. Building. The Thompson Trust represents and warrants that the existing building upon Lots 1 and 2, Harding Road Place is a tenant improvement and will be removed by the tenant promptly upon expiration of the leasehold on August 31, 2000. In the event the building is not removed and the site restored to grade in accordance with applicable building code requirements, City may

BK8238PG789

withhold from the purchase price 120% of the estimated cost of completing the demolition of the building and the restoration of the site to grade. City may thereafter complete the demolition of the building and the restoration of the site to grade. The City shall refund to the Thompson Trust the difference, if any, between the actual out-of-pocket costs to complete such work and the amount withheld from the purchase price.

10. Option to Withdraw. The City has entered into this Covenant in reliance upon appraisals of the affected property made by appraisers employed by The Thompson Trust. In the event City hereafter determines at any time that the stipulated value of Tracts A and B established herein are unreasonable, City may by written notice to The Thompson Trust withdraw from this Covenant. In the event the City withdraws from this Covenant, then this Covenant shall be of no further force or effect.

THE THOMPSON TRUST

By: Luther L. Hill, Jr.  
Luther L. Hill, Jr., Trustee

By: Samuel O'Brien  
Samuel O'Brien, Trustee

By: Riley Richards, Jr.  
Riley Richards, Jr., Trustee

STATE OF IOWA ) ss:  
COUNTY OF POLK )

On this 14 day of April, 1999, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Luther L. Hill, Jr., to me personally known and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

Peter A. Brown  
Notary Public for State of Iowa

STATE OF IOWA ) ss:  
COUNTY OF POLK )

On this 14 day of April, 1999, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Samuel O'Brien, to me personally known and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

Peter A. Brown  
Notary Public for State of Iowa

STATE OF IOWA ) ss:  
COUNTY OF POLK )

On this 14 day of April, 1999, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Riley Richards, to me personally known and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

Peter A. Brown  
Notary Public for State of Iowa

BK8238PG790

ACCEPTANCE BY CITY

The City of Des Moines hereby accepts the beneficial interest conveyed by this Declaration of Covenant Stipulating Value.

CITY OF DES MOINES, IOWA

*[Handwritten signature of Preston A. Daniels]*

By: Preston A. Daniels  
Preston A. Daniels, Mayor

ATTEST:

*[Handwritten signature of Donna v. Boetel Baker]*

Donna v. Boetel Baker, City Clerk

STATE OF IOWA        )  
                                  ) ss:  
COUNTY OF POLK    )

On this 4<sup>th</sup> day of June, 1999, before me, the undersigned, a Notary Public, personally appeared PRESTON A. DANIELS and DONNA V. BOETEL-BAKER, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution and Roll Call No. 99- 1172 adopted by the City Council on the 19<sup>th</sup> day of April, 1999, and that Preston A. Daniels and Donna V. Boetel-Baker acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



*[Handwritten signature of Karen Marie Herzberg]*  
Karen Marie Herzberg  
Notary Public in the State of Iowa

BK 8238 PG 791

99-1172

Return to: CITY CLERK-DES MOINES  
400 East First Street  
DES MOINES, IA 50319-8991  
(515) 283-4209

# The Des Moines Register

## AFFIDAVIT OF PUBLICATION

### COPY OF ADVERTISEMENT

I, Donna V. Boetel-Baker, Exhibitor of the City of Des Moines, Iowa, do hereby certify that this is a true and correct copy of the original paper(s) filed in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal on this

9th day of June 1999  
*Donna Boetel Baker*  
City Clerk

STATE OF IOWA

SS

COUNTY OF POLK

The undersigned, being first duly sworn on oath, states that she/he is the

Accounting Clerk *Mary Anderson*  
of The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER (Daily)

DES MOINES SUNDAY REGISTER

newspapers of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made a part of this affidavit, was printed and published in The Des Moines Register (daily) on the following dates 4/9/99

Subscribed and sworn to before me by said affiant this 4th day of May, 1999.

*Beverly S. Leckler*  
Notary Public in and for Polk County, Iowa

### (R400) - NOTICE OF PROPOSAL TO VACATE AND CONVEY RIGHT-OF-WAY

NOTICE IS HEREBY GIVEN that the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating the East/West alley extending between Luther King Street and Martin Luther King Jr. Parkway, North of Ingersoll Avenue, more particularly described as follows:

The 16.0 foot wide vacated East/ West alley right-of-way lying South of and adjoining lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B" WEST AND BURTON'S ADDITION, an Official Plat, and which lies North of and adjoining Lots 1 through 9, HARDING ROAD PLACE, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOTICE IS FURTHER GIVEN that if the City Council has adopted a resolution relating to a proposal to convey such right-of-way to The Thompson Trust in exchange for a 50 foot wide storm sewer easement on and along the vacated alley, and for a stipulation as to the value of land owned by the Trust which will be needed for the planned widening of the Martin Luther King Jr. Parkway to the east between Ingersoll Avenue and High Street, such conveyance is contingent upon the City Council first deciding to vacate such right-of-way.

NOTICE IS FURTHER GIVEN that the City Council will consider the adoption of the proposed vacation ordinance and approval of the proposed exchange and approval of the proposed hearing to be held at 5:30 p.m. in the Council Chambers, City Hall, Des Moines, Iowa, 400 East First Street, Des Moines, Iowa, on April 19, 1999.

Copies of the proposed ordinance and conveyance documents are available at the office of the City Clerk, City Hall, Des Moines, Iowa. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

Published in The Des Moines Register on April 9, 1999.

\$ 29.60

Mailing Address ■ P.O. Box 957 ■ Des Moines, Iowa 50304

Street Address ■ 715 Locust Street ■ Des Moines, Iowa 50309 ■ (515) 284-8000

Web Address ■ www.dmregister.com

PO# 6066  
Book: 8238 Page: 787 Seq: 6  
BK 8238 PG 792  
GANNETT