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Fee Amt: \$37.00 Page 1 of 7  
Polk County Iowa  
TIMOTHY J. BRIEN RECORDER  
File# 2006-00008195  
BK 11185 PG 707-713

Upon recording return to:  
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 5 and 6, Block C in Commissioners Addition 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 "Garage Property").

**DECLARATION OF COVENANTS**

K.C. Holdings VI, L.L.C., an Iowa limited liability company, as lessee and purchaser of the Garage Property pursuant to an instrument memorialized by memorandum filed in the Office of the Polk County Recorder at Book 11,006, Page 690 (hereinafter called "Developer") and as owner of the Garage Property Improvements, in consideration of the mutual obligations undertaken by Developer 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") and other valuable consideration, does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to its current and future interests the real estate in the City of Des Moines, Polk County, Iowa, identified as the Garage Property and Garage Property Improvements 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 & 00-0789	8491-645 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, with the consent and approval of Owner, has undertaken to construct parking garage improvements to the Garage Property (the "Garage Property Improvements").

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 Garage Property Improvements 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 to its interests to the Garage Property and the Improvements thereon, or any part thereof, that the Developer and such successors and assigns, shall:

- (a) undertake the development of the Garage Property by constructing the Garage Property Improvements thereon in accordance with the terms of the Agreement and all applicable State and City laws and regulations.
- (b) use the Garage 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 Garage 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 Garage 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 Garage Property.
- (e) maintain the Garage Property Improvements 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 Garage Property commence within ninety (90) days and diligently pursue to completion repairs to restore the Garage Property 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 Garage Property.
- (g) insure the Garage Property Improvements 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 Garage Property, promptly commence repairing and restoring the Garage Property 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 Garage 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 Garage Property in violation of the terms set forth in Subsection 52(9) of the Agreement.
- (j) make available parking spaces within the Garage Property Improvements for use by the residential condominium owners and the tenants within the building located at 604 Locust Street ("Equitable Building") and the building located at 410 Sixth Avenue ("Liberty Building").
- (k) not sell, lease, license or otherwise make available parking spaces within the Garage Property Improvements to the general public at rates lower than the prevailing parking rates set by City ordinance for the City parking garages located within a three block radius of the Garage Property.

Section 4. Situs for Taxation. Developer agrees for itself, its successors and assigns, and every successor to its interests to the Garage 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 Garage 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 Garage 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 to its interests to the Garage Property and the Improvements thereon, or any part thereof or any interest therein, and any party in possession or occupancy of the Garage 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 Garage 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 Garage 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 Garage 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 Garage 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 the 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 Garage Property and Improvements.

Section 8. Warranty of Interests. Developer does hereby covenant with City that it holds valid leasehold interests and rights to purchase the Garage Property pursuant to the terms of the lease and sale agreement with Owner memorialized by a memorandum filed in the Office of the Polk County Recorder at Book 11006 Page 690. Developer further covenants that all liens and encumbrances to its interests in the Garage Property and Garage Property Improvements are subordinated to this Declaration and Developer covenants to WARRANT AND DEFEND its current and future interests in the Garage Property and Garage Property Improvements against the lawful claims of all persons whomsoever.

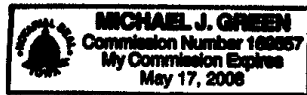
SIGNED this 20 day of April, 2005

**K.C. HOLDINGS VI, L.L.C.**  
an Iowa limited liability company

By: *[Signature]*

STATE OF IOWA )  
                          ) ss:  
COUNTY OF POLK )

On this 20 day of April, 2005, before me, a Notary Public in and for the State of Iowa, personally appeared JAKE CHRISTENSEN and by me personally known, who, being by me duly sworn, did say that that person is the Co-Manager of K.C. Holdings VI, L.L.C., executing the within and foregoing instrument, that said instrument was signed on behalf of said K.C. Holdings VI, L.L.C. by authority of its managers; and that JAKE CHRISTENSEN acknowledged the execution of said instrument to be the voluntary act and deed of said K.C. Holdings VI, L.L.C. by it and by him voluntarily executed.



*[Signature]*  
Notary Public in the State of Iowa

**CONSENT**

Better Foods, Inc. and Casson's Market, Inc. (jointly referred to herein as "Owner") do hereby represent and covenant with City that they hold the Garage Property by title in fee simple subject only to the lease and sale agreement with Developer memorialized by a memorandum filed in the Office of the Polk County Recorder at Book 11006, Page 690 and further that they have good and lawful authority to lease and convey the Garage Property to Developer pursuant to such instrument. Better Foods, Inc. and Casson's Market, Inc. hereby consent to the conveyance of the covenants set forth herein in the Garage Property and Garage Property Improvements by Developer to the City.

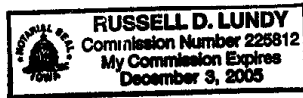
**BETTER FOODS, INC.**  
an Iowa Corporation

By: Joseph Bisignano  
By: \_\_\_\_\_

STATE OF IOWA )  
                  ) ss:  
COUNTY OF POLK )

On this 4<sup>th</sup> day of may, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joseph Bisignano to me personally known, who, being by me duly sworn, did say that he is the treasurer of Better Foods, Inc., the corporation executing the within and foregoing instrument, that (no seal has been procured by the) ~~(the seal affixed thereto is the seal of the corporation;~~ that the instrument was signed ~~(and sealed)~~ on behalf of the corporation by authority of its Board of Directors; and that Joseph Bisignano acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Russell D. Lundy  
Notary Public in the State of Iowa

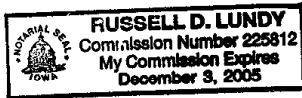


**CASSON'S MARKET, INC.**  
an Iowa Corporation

By: Joseph Bisignano  
By: \_\_\_\_\_

STATE OF IOWA )  
                          ) ss:  
COUNTY OF POLK )

On this 4<sup>th</sup> day of May, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joseph Bisignano to me personally known, who, being by me duly sworn, did say that ~~he~~ is the treasurer of Casson's Market, Inc., the corporation executing the within and foregoing instrument, that (no seal has been procured by the) ~~(the seal affixed thereto is the seal of the)~~ corporation; that the instrument was signed ~~(and sealed)~~ on behalf of the corporation by authority of its Board of Directors; and that Joseph Bisignano acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.



Russell D. Lundy  
Notary Public in the State of Iowa

**ACCEPTANCE:**

I, Diane Rauh, 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

