



.....  
**Date** ..... January 10, 2011 .....

RESOLUTION DECLARING THE DES MOINES BUILDING AT 405 6th AVENUE  
AND 513 LOCUST STREET TO BE A PUBLIC NUISANCE,  
AND AUTHORIZING THE LEGAL DEPARTMENT TO PURSUE A COURT ORDER  
FOR THE ABATEMENT OF SUCH NUISANCE,  
AND AUTHORIZING THE LEGAL DEPARTMENT TO PURSUE A COURT ORDER  
DECLARING THE BUILDING ABANDONED AND AWARDING TITLE TO THE CITY

WHEREAS, Deputy Building Official Cody J. Christensen and Fire Marshal Thomas S. Patava inspected the Des Moines Building at 405 6th Avenue and 513 Locust Street on December 7, 2010, and determined the building to be in violation of the 2006 International Building Code, the 2009 National Electrical Code, and the 2006 International Fire Codes as adopted by the City of Des Moines, all as more specifically described in their affidavits attached hereto as Exhibits "A" and "B"; and,

WHEREAS, on December 10, 2010, the titleholders, lienholders, and other parties with a known interest in the Des Moines Building were notified by mail, and where possible, by fax, e-mail or personal delivery, that the Fire and Building Code violations within the Des Moines Building created an imminent threat to fire department personnel, the public, neighboring properties and the Skywalk System, and constituted an emergency requiring immediate abatement, and were ordered to immediately take such action as is necessary to remedy and abate the violations, all as more specifically described in the letter attached hereto as Exhibit "C"; and,

WHEREAS, none of the parties with an interest in the Des Moines Building have taken any action to remedy or abate the violations of the Fire and Building Code.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The City Council hereby makes the following findings of fact regarding the condition of the Des Moines Building:
  - a) The Des Moines Building at 405 6th Avenue and 513 Locust Street is owned by Des Moines Tria Tower, LLC (originally represented by Alex Gershbeyn, Alex Shapiro and Anna Shapiro), and is more specifically described as follows:
 

Lots 3 and 4, Block C, Commissioner's Addition to Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.
  - b) The Des Moines Building is 14 stories tall, contains over 132,000 square feet of interior space formerly used for offices and retail uses, and is currently vacant.

( continued )

Date January 10, 2011

- c) The Des Moines Building is in close proximity to, and is physically connected by the Des Moines Skywalk System to the private garage at 518 Grand Avenue, the private City parking garage at 500 Grand Avenue, the Liberty Building at 418 6th Avenue and the Ruan Two Building at 601 Locust Street. This elevates the danger presented by the potential of a fire in the Des Moines Building.
  - d) The heating system in the Des Moines Building was turned off and in disrepair, allowing the temperature within the building to fall below freezing, and placing the fire sprinkler system in the building in imminent danger of freezing.
  - e) The City Legal Department obtained an emergency court order on December 10, 2010, authorizing the City to immediately enter the Des Moines Building to provide adequate heat to prevent severe damage to the sprinkler system. A copy of that order is attached as Exhibit "D".
  - f) Promptly upon issuance of the court order, City employees and representatives entered the building and began the repairs necessary to start the boiler. When the heating system was sufficiently repaired to begin heating the building in the late afternoon of December 10th, ice had already begun to accumulate in the building fixtures. Had the heating system not been repaired and placed into service that afternoon, the plumbing and fire sprinkler system would have been severely damaged.
  - g) The continued maintenance of the fire sprinkler system, and the provision of sufficient heat to keep that system from freezing and breaking, is essential for the safety of the Des Moines Building and those buildings in close proximity, and physically connected to the Des Moines Building by the Skywalk System.
  - h) The continuing failure of the titleholder and all other parties with an interest in the Des Moines Building to maintain the Des Moines Building in a safe condition causes the building to pose a significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System.
  - i) The Des Moines Building is suitable for redevelopment for housing or for a mix of housing and commercial uses.
2. The City Council hereby ratifies and affirms the prior determination by the Deputy Building Official and Fire Marshal that the Des Moines Building is a public nuisance requiring immediate emergency action by the City to mitigate the significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System.
3. The City Legal Department is hereby authorized to maintain an action in district court to obtain a decree ordering the abatement of the public nuisance, and allowing the City to take all necessary action to temporarily prevent any further nuisance situations.

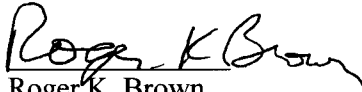
**Date** January 10, 2011

4. The City Legal Department is hereby further authorized to petition the district court pursuant to Iowa Code §657A.10A for an order declaring the Des Moines Building to be an abandoned building, and granting the City title to the property for redevelopment to include a housing component.
5. The City Manager is hereby authorized to take the necessary actions in compliance with the orders of the district court to maintain the heating system in the Des Moines Building and to temporarily abate the nuisance conditions upon the property that constitute an imminent danger as described above. In the event the building is not conveyed to the City, the costs of all such actions shall be brought before the City Council at a later date for levy as a special assessment against the property.
6. The City Manager is hereby further authorized to negotiate with the principal lienholder, PNC Bank, as successor to National City Bank, for the donation and assignment to the City of its interests in the Des Moines Building.

( Council Communication No. **10- 005** )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

  
 Roger K. Brown  
 Assistant City Attorney

Exhibits:

- "A" Affidavit of Deputy Building Official
- "B" Affidavit of Fire Marshall
- "C" Letter of December 10, 2010
- "D" Order of the Polk County District Court

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

Exhibit "A"

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CITY OF DES MOINES, IOWA,	)	Law No. _____
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
DES MOINES TRIA TOWERS, L.L.C.,	)	AFFIDAVIT OF DEPUTY
NATIONAL CITY BANK and	)	BUILDING OFFICIAL
DENNIS BLOOM,	)	CHRISTENSEN
	)	
Defendants.	)	

State of Iowa    )  
                   ) ss:  
 County of Polk  )

**Affidavit of Deputy Building Official Christensen  
 regarding the building at 405 6th Avenue and 513 Locust Street**

COMES NOW, Cody J. Christensen, and being first duly sworn upon oath, states:

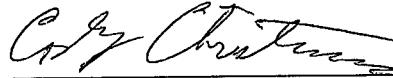
1. I am the Deputy Building Official in the Community Development Department, for the City of Des Moines, Iowa, and make this affidavit from my own personal knowledge, except as otherwise specifically acknowledged below.
  
2. As the Deputy Building Official, I have been delegated those powers and duties of the Building Official under Section 26-101, of the Des Moines Municipal Code. Such duties and powers include the following:
  - (d) Emergencies and public nuisances.
    - (1) Whenever the building official finds a public nuisance exists which requires immediate action to protect the public health and safety, such official may issue an order reciting its existence and requiring that action be taken as such official deems necessary. The action required by such official shall depend upon the nature of the nuisance, the danger to the public that the nuisance presents, the condition and deterioration of the premises, the potential for rehabilitation of structure involved and the time reasonably necessary to take the required action. If the owner does not comply with the order within the time specified in such order, such official may authorize the taking of the action specified in the order. Any costs incurred may be assessed against the property.
    - (2) Notice of the order shall be given to all owners, tenants, and other persons holding a property interest in the premises who are reasonably known to such official. Notice shall be given by that method which is reasonably calculated to inform each recipient within the shortest practicable period of time, considering the nature of the emergency and

any difficulties in notifying the owners. If an owner or other person holding a property interest in the premises cannot be found, an affidavit shall be completed by the person attempting to locate such person, describing the efforts made, and held on file.

3. The structure at 405 6th Avenue and 513 Locust Street, in the City of Des Moines, Iowa, is locally known as the "Des Moines Building".
4. According to the information available from the Polk County Assessor's Office, the Des Moines Building was constructed in 1931 and contains approximately 12,000 square feet per floor, and was formerly used for offices and retail spaces.
5. I personally inspected the Des Moines Building on December 7, 2010. The Des Moines Building is 14 stories tall, was formerly used for offices and retail spaces, and is currently vacant. During my site visit, the water and electrical systems were functional, but the Building was unheated and interior temperatures were estimated to be between 37 and 39 degrees Fahrenheit. The outdoor temperature at the time of inspection was 25 degrees Fahrenheit. The building escort, who identified himself as the most recent boiler operator, indicated that the 2 boilers serving the building have not been maintained, and he estimated that it may cost \$20,000 to complete this work.
6. The Des Moines Building is currently in violation of the following provisions of the 2006 International Building Code ("IBC") and 2008 National Electrical Code ("NEC") as adopted by the City of Des Moines:
  - a) IBC 1204.1 requires spaces to be capable of maintaining a minimum indoor temperature of 68 degrees Fahrenheit. The Building is currently incapable of being maintained at this temperature. The National Weather Service forecast for Des Moines is that the temperatures will drop below zero degrees this weekend. Under these conditions and unless heat is restored to the Building, the Building's fire sprinkler and water supply systems will freeze and break. When this happens, the Building will be flooded by leaking pipes.
  - b) Many of the Building's electrical systems will be damaged by water when the water pipes break. Article 110.11 of the NEC requires equipment not to be located in damp or wet locations unless the equipment is listed for such use. The electrical service panels, fixtures, and systems within the building are not listed for wet locations. Subjecting these systems to water from leaking frozen pipes creates a hazard to any personnel who enter the building. Building components may become energized by water damaged electrical equipment.
  - c) IBC 403.2 requires the Building to be provided with an automatic sprinkler system. When the pipes freeze and the sprinkler system is no longer operational, the building will be without the main source of fire protection required by the IBC.
7. It is my professional opinion that the fire sprinkler system in the Des Moines Building is in imminent danger of failing if the Building remains unheated; that the threat of losing the fire sprinkler system poses a significant and imminent threat to the public, fire department

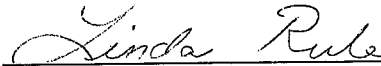
personnel, neighboring properties, and the skywalk system; and that these circumstances constitute an emergency requiring immediate abatement.

8. Under the authority delegated me as the Deputy Building Official by Section 26-101(d), of the Des Moines Municipal Code, I hereby order and direct any person having any ownership or control over the Des Moines Building at 405 6th Avenue and 513 Locust Street to immediately take such action as is necessary to remedy and cure the violations of the Building and Electrical Codes identified above.



Cody J. Christensen  
Deputy Building Official  
City of Des Moines, Iowa

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of December, 2010, by Cody J. Christensen, who is by me personally known.



Notary Public in and for the State of Iowa



IN THE IOWA DISTRICT COURT FOR POLK COUNTY

---

CITY OF DES MOINES, IOWA,	)	Law No. _____
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
DES MOINES TRIA TOWERS, L.L.C.,	)	AFFIDAVIT OF DISTRICT CHIEF/
NATIONAL CITY BANK and	)	FIRE MARSHAL PATAVA
DENNIS BLOOM,	)	
	)	
Defendants.	)	

---

State of Iowa    )  
                      ) ss:  
County of Polk    )

**Affidavit of District Chief/Fire Marshal Patava  
regarding the building at 405 6th Avenue and 513 Locust Street**

COMES NOW, Thomas S. Patava, and being first duly sworn upon oath, states:

1. I am the Fire Marshal and a District Chief in the Fire Department for the City of Des Moines, Iowa, and make this affidavit from my own personal knowledge, except as otherwise specifically acknowledged below.
2. As Fire Marshal, I have been assigned the duty and power to enforce the 2006 International Fire Code ("IFC") as adopted in Chapter 46 of the Des Moines Municipal Code.
3. The structure at 405 6th Avenue and 513 Locust Street, in the City of Des Moines, Iowa, is locally known as the "Des Moines Building".
4. According to the information available from the Polk County Assessor's Office, the Des Moines Building was constructed in 1931 and contains approximately 12,000 square feet per floor, and was formerly used for offices and retail spaces.
5. I personally inspected the Des Moines Building on December 7, 2010. The Des Moines Building is 14 stories tall, was formerly used for offices and retail spaces, and is currently vacant. The building escort, indicated that the 2 boilers serving the building have not been maintained, and he estimated that it may cost \$20,000 to complete this work.
6. The Des Moines Building is currently in violation of the following provisions of the 2006 International Fire Code ("IFC") as adopted by the City of Des Moines:

- a) IFC 901.6 requires that fire detection, alarm and extinguishing systems shall be maintained in an operative condition at all times and shall be replaced or repaired where defective. The wet pipe sprinkler system in this building has been serviced within the past 12 months and therefore is compliant. However, NFPA 25 (below) is referenced in the IFC and is therefore applicable. This standard requires that the building maintain adequate heat so as to prevent freezing of the water within the sprinkler system. The temperature inside the building at the time of the site visit was estimated between 37-39 degrees Fahrenheit.
  - b) NFPA 25:5.2.5 provides: "Annually, prior to the onset of freezing weather, buildings with wet pipe systems shall be inspected to verify that windows, skylights, doors, ventilators, other openings, and closures, blind spaces, unused attics, stair towers, roof houses, and low spaces under buildings do not expose water-filled sprinkler piping to freezing and to verify that **adequate heat (minimum 40 degrees Fahrenheit) is available.**" Chapter 4 of NFPA 25 provides that the "responsibility for properly maintaining a water-based fire protection system shall be that of the owner of the property".
  - c) The fire alarm system has not been serviced within the past 12 months and therefore is in violation and needs to be serviced in accordance with IFC 901.6 referenced above.
  - d) IFC 903.4 provides: "All valves controlling the water supply system for automatic sprinkler systems, pumps, tanks, water levels and temperatures, critical air pressures, and water-flow switches on all sprinkler systems shall be electrically supervised." It is not known whether the fire sprinkler system devices are being monitored by an alarm monitoring company. If the system is not being monitored, it is in violation and it is unlikely that system activation (from a fire or frozen pipe) would generate a response from the fire department until a civilian or passerby noticed a fire or water was discovered running from the building.
7. It will be extremely difficult to effectively mitigate a fire in this 14 story building without a functional fire sprinkler system, and would present significant logistical challenges to our fire suppression personnel. Fighting a fire in a high rise building without the use of an operable fire sprinkler system also subjects the firefighters to an increased level of danger.
  8. The Des Moines Building is in close proximity to, and is physically connected by the Des Moines Skywalk System to the private garage at 518 Grand Avenue, the City parking garage at 500 Grand Avenue, the Liberty Building at 418 6th Avenue and the Ruan Two Building at 601 Locust Street. This elevates the danger presented by the potential of a fire in the Des Moines Building.
  9. It is my professional opinion that the fire sprinkler system in the Des Moines Building is in imminent danger of failing if the Des Moines Building remains unheated; that the threat of losing the fire sprinkler system poses a significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System; and that these circumstances constitute an emergency requiring immediate abatement.



10. Under the authority delegated me as the Fire Marshal for the City of Des Moines, I hereby order and direct any person having any ownership or control over the Des Moines Building at 405 6th Avenue and 513 Locust Street to immediately take such action as is necessary to remedy and cure the violations of the Fire Codes identified above.

*Thomas S. Patava*

Thomas S. Patava  
District Chief / Fire Marshall  
City of Des Moines, Iowa

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of December, 2010, by Thomas S. Patava, who is by me personally known.

*Deborah A. Bruce*

Notary Public in and for the State of Iowa



## CITY ATTORNEY

Bruce E. Bergman

## DEPUTY CITY ATTORNEYS

Mark Godwin  
Lawrence R. McDowell  
Kathleen Vanderpool

## ASSISTANT CITY ATTORNEYS

Angela T. Althoff  
Roger K. Brown  
Ann M. DiDonato  
David A. Ferree  
Glenna K. Frank  
Gary D. Goudelock, Jr.Michael F. Kelley  
Vicky L. Long Hill  
Steven C. Lussier  
Katharine J. Massier  
Carol J. Moser  
Douglas P. Phillip

December 10, 2010

Des Moines TRIA Tower, LLC  
C T Corporation System  
500 E. Court Avenue  
Des Moines, IA 50309  
(Registered Agent)  
Copy by personal delivery

Des Moines TRIA Tower, LLC  
%Di Paola Company  
Attn: Alex Shapiro or Alex Gershbeyn  
4350 Di Paolo Center  
Glenview, IL 60025  
(Principal Office - Articles of Incorporation)  
Copy by fax: 847-390-8923

Des Moines TRIA Tower, LLC  
5005 Newport Drive, Suite 600  
Rolling Meadows, IL 60008  
(Principal Office - 2008 Biennial Rpt)  
Mail only

Des Moines TRIA Tower, LLC  
% Iowa Realty Co. Inc.  
Attn: Brad Hickok  
3501 Westown Pkwy  
West Des Moines, IA 50266-1007  
(Contact for property tax purposes)  
Copy by fax: 515-453-5430

PNC Financial Services Group, Inc  
formerly National City Bank  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, PA 15222  
(Lienholder)  
Mail only

Jeffrey W. Courter, Esq.  
Nyemaster Goode Law Firm  
700 Walnut, Suite 1600  
Des Moines, IA 50309-3899  
(Attorney for National City Bank)  
Copy by fax: 515-283-3108

Dennis Bloom, Esq  
801 E. Prospect St  
Red Oak, IA 51566-1629  
(Tax Sale Certificate Holder)  
Copy by fax: 712-623-5193

Re: The building at 405 6th Avenue and 513 Locust Street, Des Moines, Iowa, locally known as the Des Moines Building; notice of Fire Code and Building Code violations creating imminent danger; notice of nuisance and, demand to correct and abate such violations and nuisance.

December 10, 2010

page 2

TO WHOM IT MAY CONCERN:

The building at 405 6th Avenue and 513 Locust Street in the City of Des Moines, Iowa, and locally known as the Des Moines Building, is in violation of the Building and Fire Codes and the condition of the building constitutes a nuisance and an emergency requiring immediate abatement.

Enclosed for your reference are the Affidavit of District Chief / Fire Marshall Patava and of Building Official Christensen which identify the existing conditions that place the Des Moines Building in violation of the 2006 versions of the International Fire Code, International Building Code and the 2008 National Electrical Code. In summary, the lack of a functioning boiler and the dropping temperatures within the Des Moines Building creates an imminent threat that the fire sprinkler system will freeze and break within the next few days.

The City of Des Moines Fire Marshal and Building Official have each determined that the fire sprinkler system in the Des Moines Building is in imminent danger of failing if the Des Moines Building remains unheated; that the threat of losing the fire sprinkler system poses a significant and imminent threat to fire department personnel, the public, neighboring properties, and the Skywalk System; and that these circumstances constitute an emergency requiring immediate abatement.

**The City of Des Moines Fire Marshal and Building Official have both ordered and directed any persons having any ownership or control over the Des Moines Building at 405 6th Avenue and 513 Locust Street, to immediately take such action as is necessary to remedy and abate the violations of the codes identified above. These orders apply to you, if you are an owner or person in control of the Des Moines Building.**

The condition of the Des Moines Building, and the threat it poses to the adjoining buildings which are connected to it by the Skywalk System, constitutes a nuisance under the provisions of Section 42-347 of the Municipal Code of the City of Des Moines, and of Iowa Code §364.12(3). **All persons having any ownership or control over the Des Moines Building at 405 6th Avenue and 513 Locust Street, are hereby further ordered to immediately take such action as is necessary to remedy and abate the nuisance created by the condition of the building as identified above.**

Unless immediate action is taken by the owners and/or persons in control of the Des Moines Building to abate the nuisance identified above, the City of Des Moines intends to take the necessary and appropriate steps to restore heat to the building and to abate such nuisance. The City will also seek to recover all costs it incurs in abating this nuisance by a judgment against all owners of the building and/or by a special assessment against the building as allowed by Iowa Code §364.12(3).

December 10, 2010

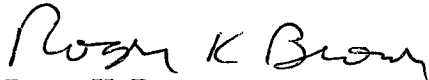
page 3

Please also be advised that the City of Des Moines intends to immediately file an action in the District Court of Polk County, Iowa, asking that the Court:

1. Immediately grant a temporary injunction authorizing the City of Des Moines, its agents, employees and/or contractors to enter into the Des Moines Building and take all necessary and appropriate action to provide sufficient heat in the building to prevent the freezing of the sprinkler system and concomitant dangers associated therewith.
2. Schedule a hearing upon proper notice to all interested parties to determine whether a permanent injunction should be issued allowing the City of Des Moines to enter the property as necessary to prevent any future incidents of this type.
3. Enter an order, after proper notice and hearing, that the owner of the property be assessed all costs associated with this action, as authorized by the City of Des Moines Municipal Ordinances, the Iowa Code, or any other applicable law.
4. Grant such other and further relief that the Court deems just and equitable under the circumstances.

Please contact me if you have any questions regarding the above.

Sincerely,



Roger K. Brown  
Assistant City Attorney  
515/283-4541

cc: *Thomas Patava, Fire Marshal*  
*Cody Christensen, Building Official*  
*Matt Anderson, Economic Development Administrator*  
*John TeKippe, Fire Chief*  
*Phil Delafield, Community Development Director*

~~FILED  
POLK COUNTY, IA  
10 DEC 10 AM 9:06~~

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

~~CLERK DISTRICT COURT~~ CITY OF DES MOINES, IOWA,

Petitioner,

vs.

DES MOINES TRIA TOWERS, L.L.C.,  
NATIONAL CITY BANK and  
DENNIS BLOOM,

Defendants.

Law No. CUCV 008442

ORDER

FILED  
POLK COUNTY, IA  
10 DEC 10 AM 9:04  
CLERK DISTRICT COURT

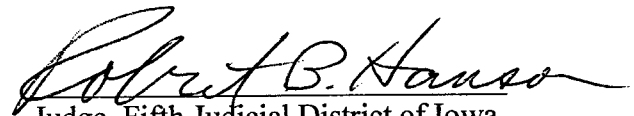
Before the Court is Petitioner City of Des Moines' Petition for Temporary Injunction pursuant to Iowa Rules of Civil Procedure 1.501 et seq. The City is represented by Assistant City Attorney Gary D. Goudelock, Jr., who appears *ex parte* for purposes of the temporary injunction only. Having reviewed the City's Petition, the Court determines that serious and irreparable harm is likely to occur to the City unless the Court grants the relief requested in the Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the City of Des Moines is hereby authorized to immediately enter the property located at 405 Sixth Avenue and 5513 Locust Street, commonly referred to as the Des Moines Building, to provide adequate heat to prevent severe damage to the sprinkler system and to take any and all other actions deemed necessary by the Fire Marshal and Building Official to prevent any other and further nuisance situations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City will forthwith provide notice to all Defendants in this matter as required by the Iowa Rules of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a hearing on the City's Petition for Permanent Injunction shall be set within 30 days of service on all interested parties.

IT SO ORDERED this 10<sup>th</sup> day of December, 2010.

  
Judge, Fifth Judicial District of Iowa

Original filed.

Copies to:

Gary D. Goudelock, Jr. AT 0002967  
Assistant City Attorney  
400 Robert D. Ray Dr.  
Des Moines, IA 50309  
ATTORNEY FOR PLAINTIFF

Jeffrey Courter  
Nyemaster Law Firm  
700 Walnut St., Ste. 1600  
Des Moines, IA 50309  
ATTORNEY FOR NATIONAL CITY BANK