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Date..... July 11, 2011

WHEREAS, on April 25, 2011, by Roll Call No. 11-0750, the City Council duly resolved to hold a public hearing on May 9, 2011, at 5:00 p.m., in the Council Chambers at City Hall, to consider a proposal from Paul Koester to rezone property located at 1704 High Street from C-2 General Retail and Highway Oriented Commercial District to NPC Neighborhood Pedestrian Commercial District to develop a 21-unit three-story apartment building with minimal street setback from 17th Street and High Street that will be subject to an NPC and Multi-family Site Plan review by the Plan and Zoning Commission. The subject property is owned by 1717 Ingersoll, LLC; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on April 28, 2011, as provided by law, setting forth the time and place for hearing on said proposed amendment to the approved PUD Conceptual Plan; and

WHEREAS, at its meeting on May 5, 2011 the Plan and Zoning Commission recommended that the rezoning to NPC be subject to the following additional conditions which were mistakenly omitted from Roll Call No. 11-0892 and Ordinance No, 15,016 rezoning the property to the NPC Neighborhood Pedestrian Commercial District:

- A. General placement of any structure shall be with minimal setbacks toward both High Street and 17th Street with any surface parking located away from the corner separated by the building.
- B. Prohibit the use of the property for the following:
 - (1) Billiard parlor/game room.
 - (2) Taverns and night clubs.
 - (3) Communication Tower/Antenna (unless as an extension of 20 feet or less from the structure).
 - (4) Gas Stations/convenience stores.
 - (5) Package goods liquor store.
- C. Any future development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for the NPC Districts. Furthermore, any future multiple-family residential development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for Multiple-Family Residential.
- D. When the Site Plan comes back to the Plan and Zoning Commission off-street parking shall be maximized.

Date July 11, 2011

WHEREAS, in accordance with the published notice those interested in the proposed rezoning, both for and against, were given opportunity to be heard with respect thereto and have presented their views to the City Council; and

WHEREAS, on May 23, 2011 by Roll Call No. 11-0912, the City Council, having closed the hearing on May 9, 2011 by Roll Call No. 11-0826, gave final passage to Ordinance No. 15,016 which authorized rezoning of the property to the NPC district classification without the conditions as recommended by the Plan and Zoning Commission and as agreed to by all of the owners.

WHEREAS, all owners of the property have accepted these conditions to rezoning the Property to NPC district classification by submitting an Acceptance of Rezoning Ordinance which impose conditions on the Property enforceable on the owners and their successors in interest and which will be recorded in the official land records of Polk County, Iowa.

Moved by _____ that the corrected rezoning ordinance repealing and replacing Ordinance No. 15,016 be considered and given first vote for passage.

APPROVED AS TO FORM:


 Michael F. Kelley
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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.

City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 1710 High Street from the C-2 General Retail and Highway Oriented Commercial District to the NPC Neighborhood Pedestrian Commercial District classification, and repealing and replacing Ordinance No. 15,016.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 1710 High Street, more fully described as follows, from the C-2 General Retail and Highway Oriented Commercial District to the NPC Neighborhood Pedestrian Commercial District classification:

West 44 feet, Lot 1, and all Lots 2, 3, and 4, and (except the West 13 feet) Lot 5, Block B, J.C. Saverys Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa

Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

- A. General placement of any structure shall be with minimal setbacks toward both High Street and 17th Street with any surface parking located away from the corner separated by the building.

- B. Prohibit the use of the property for the following:
 - (1) Billiard parlor/game room.
 - (2) Taverns and night clubs.
 - (3) Communication Tower/Antenna (unless as an extension of 20 feet or less from the structure).
 - (4) Gas Stations/convenience stores.
 - (5) Package goods liquor store.

- C. Any future development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for the NPC Districts. Furthermore, any future multiple-family residential development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for Multiple-Family Residential.

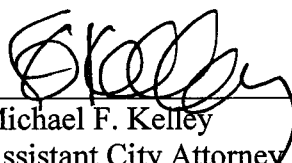
- D. When the Site Plan comes back to the Plan and Zoning Commission off-street parking shall be maximized.

Section 3. Ordinance No. 15,016 passed May 23, 2011, is hereby repealed and replaced by this Ordinance.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Section 5. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

Prepared by:	Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309	515/283-4124
Return Address:	City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309	
Taxpayer:	No change	
Title of Document:	Acceptance of Rezoning Ordinance	
Grantor's Name:	1717 Ingersoll, LLC; PW Waterbury, LC; OPOMODO, LLC	
Grantee's Name:	City of Des Moines, Iowa	
Legal Description:	West 44 feet, Lot 1, and all Lots 2, 3, and 4, and (except the West 13 feet) Lot 5, Block B, J.C. Saverys Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.	

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That 1717 Ingersoll, LLC; PW Waterbury, LC; and OPOMODO, LLC, as titleholders, are the sole owners of the Property in the vicinity of 1710 High Street, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the C-2 General Retail and Highway Oriented Commercial District to NPC Neighborhood Pedestrian Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

A. General placement of any structure shall be with minimal setbacks toward both High Street and 17th Street with any surface parking located away from the corner separated by the building.

B. Prohibit the use of the property for the following:

- (1) Billiard parlor/game room.
- (2) Taverns and night clubs.
- (3) Communication Tower/Antenna (unless as an extension of 20 feet or less from the structure).
- (4) Gas Stations/convenience stores.
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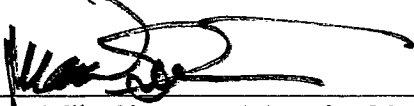
- C. Any future development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for the NPC Districts. Furthermore, any future multiple-family residential development of the site shall be subject to the Plan and Zoning Commission's review and approval of a Site Plan under the Design Guidelines for Multiple-Family Residential.
- D. When the Site Plan comes back to the Plan and Zoning Commission off-street parking shall be maximized.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from NPC, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

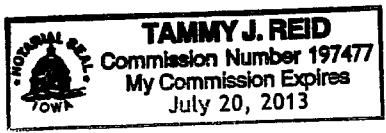
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

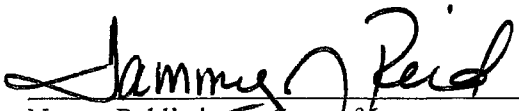
1717 Ingersoll, LLC

By: 
 Mike Simonson, Managing Member
 Titleholder

STATE OF IOWA)
) ss:
 COUNTY OF POLK)

This instrument was executed and acknowledged before me on July 1, 2011, 2011 by Mike Simonson, Managing Member of 1717 Ingersoll, LLC who has authority to sign on behalf of 1717 Ingersoll, LLC and who is personally known to me or who has provided identification pursuant to and sufficient under Iowa law.




 Notary Public in the State of Iowa

