

Date November 7, 2011

RESOLUTION CLOSING PUBLIC HEARING ON THE SALE OF THE DES MOINES BUILDING PROPERTY AT 405 6TH AVENUE AND 513 LOCUST STREET TO DES MOINES APARTMENTS, LP., AND APPROVING SAME

WHEREAS, on January 10, 2011, by Roll Call No. 11-040, the City Council of the City of Des Moines declared the Des Moines Building at 405 6th Avenue and 513 Locust Street, more specifically described as follows:

Lots 3 and 4, in Block C, in Commissioner's Addition to Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

to be a public nuisance and authorized the Legal Department to pursue a court order for the abatement of such nuisance, declaring the building abandoned, and awarding title to the City; and,

WHEREAS, on February 28, 2011, by Roll Call No. 11-0370, in anticipation that the City would be awarded title to the Des Moines Building, the City Council authorized and directed the City Manager to solicit proposals for the acquisition and private redevelopment of the Des Moines Building; and,

WHEREAS, the City was awarded title to the property containing the Des Moines Building by an order entered by the Polk County District Court on May 26, 2011, in Case No. CD61147; and,

WHEREAS, in response to the City's solicitation for proposals for the redevelopment of the Des Moines Building, Nelson Development and Construction and Foutch Brothers, LLC, ("Nelson Foutch") submitted a *Proposal to Acquire and Redevelop the Des Moines Building, 405 6th Avenue and 513 Locust Street* dated June 15, 2011 (the "Redevelopment Proposal"); and,

WHEREAS, on July 11, 2011, by Roll Call No. 11-1251, the City Council of the City of Des Moines approved the Redevelopment Proposal and selected Nelson Foutch or their designee as the Preferred Redeveloper; and,

WHEREAS, Nelson Foutch have organized Des Moines Apartments, LP, to serve as their designee for the acquisition and redevelopment of the Des Moines Building in conformance with their Redevelopment Proposal; and,

WHEREAS, the City Manager has negotiated the following proposed agreements with Des Moines Apartments, LP (the "Redeveloper"), for the sale and redevelopment of the Des Moines Building property, which are on file and available for inspection by the public in the office of the City Clerk:

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- a) *Agreement for Sale of Real Estate* which provides for the sale to Redeveloper of the Des Moines Building property for a purchase price of \$150,000, and an undertaking by the Redeveloper to renovate and rehabilitate the property for commercial and residential use in conformance with the Redevelopment Proposal.
- b) *Easement for Building Encroachments* which provides for the conveyance of an easement for the continued use and maintenance of the existing underground vaults and building encroachments which extend from the Des Moines Building into the adjoining public rights-of-way.
- c) *Agreement for Assignment and Assumption of Skywalk Agreement and Lease Agreement* whereby Des Moines Apartments, LP, assumes the rights and obligations held by the former owners of the Des Moines Building to use and maintain the Skywalk Corridors within the Des Moines Building and within the vacated air rights over the east/west alley lying north of and adjoining the Des Moines Building.

WHEREAS, on October 24, 2011, by Roll Call No. 11-1781, it was duly resolved by the City Council that the proposed agreements identified above for the sale of the Des Moines Building property, be scheduled for consideration at a public hearing on November 7, 2011, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of said proposal to sell and convey the Des Moines Building property, including the vacation and conveyance of portions of the adjoining rights-of-way, was given as provided by law by publication in the Des Moines Register on October 28, 2011, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed sale and conveyance of the Des Moines Building property, including the vacation and conveyance of portions of the adjoining rights-of-way, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. The public hearing on the proposed sale and conveyance of the Des Moines Building property as described above, including the vacation and conveyance of portions of the adjoining rights-of-way, is hereby closed. Upon due consideration of the facts and statements of interested persons, the objections to the proposal, including the vacation and conveyance of portions of the rights-of-way adjoining the Des Moines Building property are hereby overruled.

2. There is no public need for the right-of-ways proposed to be vacated and the public would not be inconvenienced by reason of the vacation and conveyance of the subsurface areas adjoining the Des Moines Building property more specifically described as follows:

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The subsurface area lying below the top surface of the public sidewalk within the East 14.0 feet of the 6th Avenue right-of-way lying West of and adjoining the North 26.5 feet of Lot 4, in Block C, in Commissioner's Addition to Fort Des Moines, an Official Plat; and, the subsurface area lying below the pavement within the South 11.0 feet of the East/West alley right-of-way lying North of and adjoining the West 58.5 feet of said Lot 4, and lying below the pavement within the East 14.0 feet of the 6th Avenue right-of-way lying West of and adjoining the said South 11.0 feet of the said East/West alley, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. That the sale and conveyance of the Des Moines Building property to Des Moines Apartments, LP, pursuant to the *Agreement for Sale of Real Estate*; the vacation and conveyance of the subsurface areas within the adjoining public right-of-ways pursuant to the *Easement for Building Encroachments*; and, the assignment of the leasehold interest and Skywalk Agreement for portions of the Skywalk System within and adjoining the Des Moines Building pursuant to the *Agreement for Assignment and Assumption of Skywalk Agreement and Lease Agreement*, all as more specifically described above, be and are hereby approved, subject to final passage of the ordinance vacating the affected public rights-of-way.

4. Upon final passage of an ordinance vacating the affected right-of-ways, the Mayor is hereby authorized and directed to sign the said *Agreement for Sale of Real Estate* and the *Special Warranted Deed* as provided for in that Agreement; the *Easement for Building Encroachment*; and the *Agreement for Assignment and Assumption of Skywalk Agreement and Lease Agreement*, and the City Clerk is hereby authorized and directed to attest to the Mayor's signature on such documents.

5. The City Clerk is further authorized and directed to forward a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, together with the executed *Special Warranty Deed*, *Easement for Building Encroachment*; and *Agreement for Assignment and Assumption of Skywalk Agreement and Lease Agreement*, to the Real Estate Section of the Engineering Department for closing in accordance with the terms of the *Agreement for Sale of Real Estate*. The City Clerk is further authorized and directed to cause the *Agreement for Sale of Real Estate* to be promptly recorded in the office of the Polk County Recorder.

6. The City Manager is hereby authorized and directed to administer the *Agreement for Sale of Real Estate* in accordance with its terms. Any material amendments to the Redevelopment Proposal, and the issuance of the Certificate of Completion shall be brought back before the City Council for its approval.

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7. In the event that:

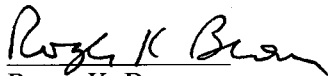
- i) the City-wide Urban Revitalization Plan is not amended to allow the Des Moines Building to qualify for a 10-year/100% exemption from taxation on the taxable value added by the improvements to the portions of the property assessed for taxation as residential property or as commercial multifamily property; and,
- ii) the City is required to advance the Economic Development grant pursuant to the *Agreement for Sale of Real Estate* to provide a financial incentive to off-set the loss of such level of tax exemption;

then, upon requisition by the City Manager's Office, the Finance Department is hereby authorized and directed to advance such installments on the Economic Development Grant.

(Council Communication No. 11- **687**)

MOVED by _____ to adopt.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

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

MOTION CARRIED

APPROVED

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.

_____ Mayor

_____ City Clerk