

Date June 24, 2013

RESOLUTION CLOSING PUBLIC HEARING AND APPROVING THE VACATION OF PORTIONS OF THE 7TH STREET, 8TH STREET AND WALNUT STREET RIGHTS-OF-WAY ADJOINING THE YOUNKERS BUILDING AT 713 WALNUT STREET AND THE CONVEYANCE OF AN EASEMENT UPON SUCH VACATED RIGHTS-OF-WAY TO LEGALIZE THE EXISTING BUILDING ENCROACHMENTS

WHEREAS, the former Younkens Department Store at 713 Walnut Street was constructed in 1899 with a basement that extends under the adjoining public sidewalks along 7th Street, 8th Street and Walnut Street, with building encroachments at the ground level that extend into the adjoining public rights-of-way, and with canopies and architectural projections that encroach into the air rights over the adjoining public rights-of-way; and,

WHEREAS, the building encroachments have previously been allowed under authority of a series of temporary areaway permits that require annual administration and renewal; and,

WHEREAS, the Younkens building is currently owned by NMI YB, LLC, and it has requested that the City vacate the rights-of-way occupied by the building encroachments, and convey it an Easement for Building Encroachment for the continued use, maintenance and repair of the existing building encroachments for the remaining life of the building; and,

WHEREAS, on May 20, 2013, by Roll Call No. 13-0797, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on June 10, 2013, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the public hearing on the proposal to vacate and convey public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and,

WHEREAS, on June 10, 2013, by Roll Call No. 13-0930, the public hearing was continued until June 24, 2013, at 5:00 p.m., to allow the owner additional time to provide legal descriptions of the areas encumbered by the building encroachments; and,

WHEREAS, in accordance with said notice, those interested in said proposed vacation and conveyance, 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public right-of-way as described below are hereby overruled and the hearing is closed.

(continued)

Date May 20, 2013

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2. The City Council hereby makes the following findings in support of the vacation and conveyance of the public rights-of-way as described below:
 - a) The portions of the public rights-of-way described below are occupied by encroachments from the Younkens building at 713 Walnut Street and have not been used for public purposes for over 100 years;
 - b) The vacation of these areas will have no impact upon the continued use of the adjoining public rights-of-way; there is no public need for the right-of-way proposed to be vacated; and, the public would not be inconvenienced by reason of the vacation of the rights-of-way more specifically described below;
 - c) The City has entered into a Development Agreement with The Alexander Company, Inc., whereby The Alexander Company has undertaken to acquire and renovate the Younkens building for commercial and multiple-family residential use by retaining most of the first story and a portion of the second story for commercial use, by renovating the "Tea Room" for banquet space or other public assembly use, by renovating the basement for vehicular parking, and by renovating the balance of the building for multiple-family residential use with 120 apartments, in substantial compliance with the approved Conceptual Development Plan; and,
 - d) The estimated value of the Easement for Building Setback described below is \$30,000, and represents an in-kind supplemental grant for the benefit of The Alexander Company, Inc., in consideration of its undertakings under the Development Agreement.

3. The vacation of the public rights-of-way described below, and the sale and conveyance of an Easement for Building Setback upon such vacated rights-of-way to NMI YB, LLC, or its designee, for the continued use, maintenance and repair of the existing encroachments from the Younkens Building for the remaining life of the Younkens Building is hereby approved.

The area to be vacated consist of an underground area below the surface of the public sidewalk, and an above ground area above the surface of the public sidewalk, individually described as follows:

Underground area lying below the surface of the public sidewalk:

AN IRREGULAR SHAPED UNDERGROUND AREA WITHIN A PORTION OF THE 7th STREET PUBLIC RIGHT-OF-WAY, THE 8th STREET PUBLIC RIGHT-OF-WAY AND THE WALNUT STREET PUBLIC RIGHT-OF-WAY, AS THEY ARE PRESENTLY ESTABLISHED LYING WEST OF, SOUTH OF, AND EAST OF BLOCK 1 IN FORT DES MOINES, AN OFFICIAL PLAT, IN THE CITY OF DES MOINES, POLK COUNTY, IOWA DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 IN SAID BLOCK 1, FORT DES MOINES; THENCE S14°51'20"E (ASSUMED FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE WESTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 149.63 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 1; THENCE N74°45'30"E ALONG THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 284.76 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE N14°51'20"W ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF

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149.61 FEET TO THE SOUTHEAST CORNER OF LOT 7 IN SAID BLOCK 1; THENCE N74°45'43"E ALONG THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 7, A DISTANCE OF 12.00 FEET; THENCE S14°51'20"E ALONG A LINE PARALLEL WITH AND 12.00 FEET EAST OF AND NORMALLY DISTANT FROM THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 161.61 FEET; THENCE S74°45'30"W ALONG A LINE PARALLEL WITH AND NORMALLY DISTANT FROM THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 308.76 FEET; THENCE N14°51'20"W ALONG A LINE PARALLEL WITH AND 12.00 FEET WEST OF AND NORMALLY DISTANT FROM THE WESTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 161.63 FEET; THENCE N74°45'43"E ALONG THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 2, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING, CONTAINING 7,296 SQUARE FEET.

This area shall be encumbered by an obligation to maintain the public sidewalk at grade for pedestrian travel as more specifically described in the text of the Easement for Building Encroachment.

Above ground area lying above surface of the public sidewalk:

AN IRREGULAR SHAPED ABOVE GROUND ENCROACHMENT OVER AND ACROSS A PORTION OF THE 7th STREET PUBLIC RIGHT-OF-WAY, THE 8th STREET PUBLIC RIGHT-OF-WAY, AND THE WALNUT STREET PUBLIC RIGHT-OF-WAY, AS THEY ARE PRESENTLY ESTABLISHED LYING WEST OF, SOUTH OF, AND EAST OF BLOCK 1, FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA DESCRIBED AS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 3 IN SAID BLOCK 1, FORT DES MOINES; THENCE S14°51'20"E (ASSUMED FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE WESTERLY LINE OF LOTS 3 AND 4 IN SAID BLOCK 1, FORT DES MOINES, A DISTANCE OF 133.13 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE N74°45'30"E ALONG THE SOUTHERLY LINE OF LOTS 3 AND 5, AND ALONG THE SOUTHERLY LINE OF THE NORTH-SOUTH ALLEY, ALL IN SAID BLOCK 1, FORT DES MOINES, A DISTANCE OF 284.76 FEET TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE N14°51'20"W ALONG THE EASTERLY LINE OF LOTS 5 AND 6 IN SAID BLOCK 1, FORT DES MOINES, A DISTANCE OF 133.11 FEET TO THE NORTHEAST CORNER OF SAID LOT 6; THENCE N74°45'43"E ALONG THE EASTERLY EXTENSION OF THE NORTHERLY LINE OF SAID LOT 6, A DISTANCE OF 11.40 FEET; THENCE S14°51'20"E ALONG A LINE PARALLEL WITH AND 11.40 FEET EAST OF THE EASTERLY LINE OF SAID LOTS 6 AND 5, A DISTANCE OF 136.22 FEET; THENCE S30°45'35"W, A DISTANCE OF 12.08 FEET; THENCE S74°45'30"W ALONG A LINE PARALLEL WITH AND 11.50 FEET SOUTH OF THE SOUTHERLY LINE OF SAID LOT 6, THE NORTH-SOUTH ALLEY IN SAID BLOCK 1, AND SAID LOT 4, A DISTANCE OF 289.35 FEET; THENCE N60°27'21"W, A DISTANCE OF 13.83 FEET; THENCE N14°51'20"W ALONG A LINE PARALLEL WITH AND 11.70 FEET WEST OF THE WESTERLY LINE OF SAID LOTS 4 AND 3, A DISTANCE OF 134.89 FEET; THENCE N74°45'43"E ALONG THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID LOT 3, A DISTANCE OF 11.70 FEET TO THE POINT OF BEGINNING, CONTAINING 6,531 SQUARE FEET.

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Date May 20, 2013

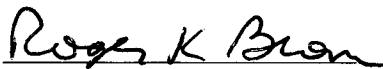
This area shall be encumbered by an obligation to maintain the open space under the existing canopy exclusive of the existing canopy columns for use as a public sidewalk for pedestrian travel as more specifically described in the text of the Easement for Building Encroachment.

4. The Mayor is authorized and directed to sign the Easement for Building Setback for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature on such document.
5. Upon final passage of an ordinance vacating the said right-of-way, the City Clerk is authorized and directed to forward the original of the said easement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the City's Office of Economic Development for release to The Alexander Company, Inc., at such time as The Alexander Company demonstrates to the satisfaction of the City Manager that the necessary financing is in place to complete the rehabilitation and renovation of the Younkers under the Development Agreement.

(Council Communication No. 13- **317**)

MOVED by _____ to adopt.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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| 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

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert D. Ray Dr., Des Moines, IA
50309 515/283-4541
Return Address: Real Estate Division - City Hall, 400 Robert Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Easement for Building Encroachment
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: NMI YB, LLC
Legal Description: Benefitted Property: Described below on this page and next.
Easement Areas: Described in Exhibit "1" at page 5.

EASEMENT FOR BUILDING ENCROACHMENT

(Building at 713 Walnut Street formerly known as the Younkers Department Store)

KNOW ALL MEN BY THESE PRESENTS:

That the **CITY OF DES MOINES, IOWA**, a municipal corporation of the County of Polk, the State of Iowa (hereinafter referred to as the "City"), in consideration of the undertaking by **The Alexander Company, Inc.**, a Wisconsin corporation, pursuant to the Urban Renewal Development Agreement dated December 3, 2012, and recorded on June 6, 2013, in Book 14819, at Page 581, and other valuable consideration, receipt of which is hereby acknowledged, does hereby convey unto NMI YB, LLC, (hereinafter referred to as the "Grantee") as the owner of the Benefitted Property and the designee of The Alexander Company, Inc., an Easement for Building Encroachment over, through and across the property described in Exhibit "1" (hereinafter collectively referred to as the "Easement Areas"), for the purpose of the Grantee using, repairing, and maintaining the adjoining building at 713 Walnut Street and the appurtenances thereto, including the basement and subterranean improvements, canopies and architectural projections located on the building as the same may be modified, repaired or rebuilt from time to time (collectively the "Building"), more specifically described as follows, and the encroachment of such Building into the Easement Areas:

Benefitted Property

Lots 3, 4, 5 and 6 and the intervening vacated North/South alley, in Block 1, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of

Des Moines, Polk County, Iowa (hereinafter referred to as the "Benefited Property").

This Easement shall be subject to the following terms and conditions:

1. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land for the benefit of the Benefited Property and shall be binding on the City and the City's successors and assigns and all future owners of the Easement Areas, and on Grantee and Grantee's successors and assigns.
2. **DURATION.** This Easement shall remain in full force and effect for the life of the Building upon the Benefited Property. In the event the Building upon the Benefited Property is destroyed by any means whatsoever more than 20 years after the date of this Easement, to such a degree that the estimated cost of the repairs necessary to restore the Building to its condition prior to such destruction exceed 60% of the replacement value of the Building prior to such destruction, then this Easement shall automatically terminate. In the event the Building upon the Benefited Property is destroyed by any means whatsoever prior to 20 years after the date of this Agreement, the Building may be reconstructed upon the existing foundation in accordance with plans approved by the City and this Easement shall continue in force, if such reconstruction is commenced within nine months of the date of such destruction and diligently pursued to completion.
3. **MAINTENANCE OF SIDEWALK.** Notwithstanding anything in this Easement to the contrary, the sidewalks within the Easement Areas shall continue to be public sidewalks for pedestrian travel. Nothing in this Easement shall be interpreted to relieve the Grantee and the Grantee's successors and assigns from their duty under Iowa law and the Des Moines Municipal Code to maintain the public sidewalks within the Easement Areas in a safe condition, in a state of good repair, and free from defects.
4. **EXPANSION OR ALTERATION OF ENCROACHMENTS.** No alterations shall be made to the Building or to the existing encroachments within the Easement Areas which expand the size of the encroachments within the Easement Areas or reduces the clearance above the public sidewalk without the prior written approval of the City.
5. **HOLD HARMLESS.** Grantee and Grantee's successors and assigns in ownership of the Benefited Property shall indemnify, defend and hold harmless the City from and against any and all liability, losses, and damages to property or bodily injury or death to any person, including payments made under workers' compensation laws, arising out of or in any way connected with the use or occupancy of the Easement Area or any part thereof, by Grantee or any person claiming through or under Grantee, unless such liability, loss damage to property or bodily injury or death of any person is caused by the negligence or willful misconduct of the City, its agents or employees. The obligation of Grantee and Grantee's successors and assigns in ownership of the Benefited Property to indemnify, defend and hold harmless shall include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the aforementioned claims, including all out-of-pocket expenses such as reasonable attorney's fees and the reasonable value of any

services rendered by the Legal Department of the City or any other officers or employees of the City.

- 6. **ACCEPTANCE.** This Easement shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.

Signed this ____ day of _____, 2013.

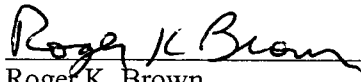
CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Diane Rauh, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

FORM APPROVED:



Roger K. Brown,
Assistant City Attorney

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STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2013, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 13-_____ of City Council on the ____ day of _____, 2013 and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____

Exhibit "1"
to Easement for Building Encroachment

The Easement Areas consist of an underground area below the surface of the public sidewalk, and an above ground area above the surface of the public sidewalk, individually described as follows:

Underground area lying below the surface of the public sidewalk:

AN IRREGULAR SHAPED UNDERGROUND AREA WITHIN A PORTION OF THE 7th STREET PUBLIC RIGHT-OF-WAY, THE 8th STREET PUBLIC RIGHT-OF-WAY AND THE WALNUT STREET PUBLIC RIGHT-OF-WAY, AS THEY ARE PRESENTLY ESTABLISHED LYING WEST OF, SOUTH OF, AND EAST OF BLOCK 1 IN FORT DES MOINES, AN OFFICIAL PLAT, IN THE CITY OF DES MOINES, POLK COUNTY, IOWA DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 IN SAID BLOCK 1, FORT DES MOINES; THENCE S14°51'20"E (ASSUMED FOR THE PURPOSE OF THIS DESCRIPTION) ALONG THE WESTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 149.63 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 1; THENCE N74°45'30"E ALONG THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 284.76 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE N14°51'20"W ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 149.61 FEET TO THE SOUTHEAST CORNER OF LOT 7 IN SAID BLOCK 1; THENCE N74°45'43"E ALONG THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 7, A DISTANCE OF 12.00 FEET; THENCE S14°51'20"E ALONG A LINE PARALLEL WITH AND 12.00 FEET EAST OF AND NORMALLY DISTANT FROM THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 161.61 FEET; THENCE S74°45'30"W ALONG A LINE PARALLEL WITH AND NORMALLY DISTANT FROM THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 308.76 FEET; THENCE N14°51'20"W ALONG A LINE PARALLEL WITH AND 12.00 FEET WEST OF AND NORMALLY DISTANT FROM THE WESTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 161.63 FEET; THENCE N74°45'43"E ALONG THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 2, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING, CONTAINING 7,296 SQUARE FEET.

The use of this easement area is encumbered by the obligation to maintain the public sidewalk at grade for pedestrian travel as more specifically described in the text of the Easement for Building Encroachment.

Above ground area lying above surface of the public sidewalk:

AN IRREGULAR SHAPED ABOVE GROUND ENCROACHMENT OVER AND ACROSS A PORTION OF THE 7th STREET PUBLIC RIGHT-OF-WAY, THE 8th STREET PUBLIC RIGHT-OF-WAY, AND THE WALNUT STREET PUBLIC RIGHT-OF-WAY, AS THEY ARE PRESENTLY ESTABLISHED LYING WEST OF, SOUTH OF,

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