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Date November 18, 2013

RESOLUTION CLOSING PUBLIC HEARING ON THE VACATION OF PORTIONS OF THE COURT AVENUE AND 4TH STREET RIGHTS-OF-WAY ADJOINING THE RANDOLPH APARTMENTS AT 202 4th STREET AND THE CONVEYANCE OF AN EASEMENT UPON SUCH VACATED RIGHTS-OF-WAY TO LEGALIZE THE EXISTING BUILDING ENCROACHMENTS, AND APPROVING SAME

WHEREAS, on August 26, 2013, by Roll Call No. 13-1366, the City Council approved an Urban Renewal Development Agreement with Randolph Apartments Limited Partnership, represented by George Sherman, President of Sherman Associates, Inc., for the redevelopment of the Hotel Randolph and the adjacent Earl & Le Bosquet and Youngerman Block Buildings at the northwest corner of 4th Street and Court Avenue for a mixed use project generally known as the Randolph Apartments; and,

WHEREAS, the three historic buildings which comprise the Randolph Apartments were constructed over 100 years ago with basements that extend under the adjoining public sidewalks along Court Avenue and 4th Streets, and with 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, Randolph Apartments Limited Partnership has requested that the City vacate the rights-of-way occupied by the building encroachments, and convey it an easement for the continued use, maintenance and repair of the existing building encroachments for the remaining life of the consolidated building; and,

WHEREAS, the portions of the public right-of-way occupied by the encroachments from the three historic buildings have not been used for public purposes for over 100 years, and the vacation of those areas will have no impact upon the continued use of the adjoining public rights-of-way; and

WHEREAS, on November 4, 2013, by Roll Call No. 13-1716, it was duly resolved by the City Council that the proposed vacation and conveyance of such rights-of-way be set down for hearing on November 18, 2013, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, the proposed vacation ordinance and Easement for Building Setback have been on file and available for public inspection in the office of the City Clerk; and,

WHEREAS, due notice of said proposal to vacate and convey public right-of-way was published in the Des Moines Register on October 7, 2013, as provided by law, setting forth the time and place for hearing on said proposal; and,



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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 rights-of-way as described below are hereby overruled and the hearing is closed.
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 Hotel Randolph and the adjacent Earl & Le Bosquet and Youngerman Block Buildings, and have not been used for public purposes for approximately 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.
3. That 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 Randolph Apartments Limited Partnership, or its designee, for the continued use, maintenance and repair of the existing encroachments from the Randolph Apartments for the remaining life of the Randolph Apartments, in consideration for a payment of \$3,222.⁰⁰, be and is hereby approved.

AIR RIGHTS EASEMENT AREA A

All that portion of the area described as follows which lies more than 8 feet above grade, which shall be measured from the surface of the underlying public sidewalk:

A PART OF 4TH STREET RIGHT OF WAY LYING ADJACENT TO THE EASTERLY LINE OF LOT 8, BLOCK 21 AND A PART OF COURT AVENUE RIGHT OF WAY LYING ADJACENT TO THE SOUTHERLY LINE OF LOT 8, BLOCK 21 OF THE ORIGINAL TOWN OF FORT DES MOINES AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA; BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE TO THE SOUTH LINE OF THE NORTH 1/6TH OF SAID LOT 8; THENCE NORTHEASTERLY PERPENDICULAR TO SAID EASTERLY LINE, 4 FEET; THENCE SOUTHEASTERLY PARALLEL TO SAID EASTERLY LINE, 114.6 FEET; THENCE SOUTHWESTERLY PARALLEL TO SAID SOUTHERLY LINE, 70.4 FEET; THENCE NORTHWESTERLY PERPENDICULAR TO SAID



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SOUTHERLY LINE, 4 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING AND CONTAINING 370 S.F.

AIR RIGHTS EASEMENT AREA B

All that portion of the area described as follows which lies more than 8 feet above grade, which shall be measured from the surface of the underlying public sidewalk: A PART OF 4TH STREET RIGHT OF WAY LYING ADJACENT TO THE EASTERLY LINE OF LOT 8, BLOCK 21 OF THE ORIGINAL TOWN OF FORT DES MOINES AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA BEGINNING 42.6 FEET NORTHWESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 8 MEASURED ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY ALONG SAID EASTERLY LINE, 13 FEET; THENCE NORTHEASTERLY PERPENDICULAR TO SAID EASTERLY LINE, 10 FEET; THENCE SOUTHEASTERLY PARALLEL TO SAID EASTERLY LINE, 13 FEET; THENCE SOUTHWESTERLY PERPENDICULAR TO SAID EASTERLY LINE, 10 FEET TO THE POINT OF BEGINNING AND CONTAINING 130 S.F. **NOTE:** Air Rights Easement Area B overlaps with Air Rights Easement Area A by 52 square feet (4' x 13').

SUBSURFACE EASEMENT AREA A

All that portion of the area described as follows which lies below grade: A PART OF COURT AVENUE RIGHT OF WAY LYING ADJACENT TO THE SOUTHERLY LINE OF LOT 8, BLOCK 21 OF THE ORIGINAL TOWN OF FORT DES MOINES AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA BEGINNING 6 FEET SOUTHWESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 8 MEASURED ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING; THENCE SOUTHEASTERLY PERPENDICULAR TO SAID SOUTHERLY LINE, 6 FEET; THENCE SOUTHWESTERLY PARALLEL TO SAID SOUTHERLY LINE, 16 FEET; THENCE SOUTHEASTERLY PERPENDICULAR TO SAID SOUTHERLY LINE, 10 FEET; THENCE SOUTHWESTERLY PARALLEL TO SAID SOUTHERLY LINE, 23 FEET; THENCE NORTHWESTERLY PERPENDICULAR TO SAID SOUTHERLY LINE, 16 FEET TO SAID SOUTHERLY LINE; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING AND CONTAINING 0.01 AC (464 S.F).

SUBSURFACE EASEMENT AREA B

All that portion of the area described as follows which lies below grade: A PART OF 4TH STREET RIGHT OF WAY LYING ADJACENT TO THE EASTERLY LINE OF LOT 8, BLOCK 21 OF THE ORIGINAL TOWN FORT DES MOINES AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA

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BEGINNING 44 FEET NORTHWESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 8 MEASURED ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY ALONG SAID EASTERLY LINE, 23 FEET; THENCE NORTHEASTERLY PERPENDICULAR TO SAID EASTERLY LINE, 16 FEET; THENCE SOUTHEASTERLY PARALLEL TO SAID EASTERLY LINE, 23 FEET; THENCE SOUTHWESTERLY PERPENDICULAR TO SAID EASTERLY LINE, 16 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 AC (386 S.F).

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 and upon proof of payment of the consideration, 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 Legal Department for release to Randolph Apartments Limited Partnership.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
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