

Date December 8, 2014

RESCISSION OF THE RESOLUTION OF NECESSITY ON  
10<sup>TH</sup> STREET STREETScape FROM  
WALNUT STREET TO MULBERRY STREET  
ACTIVITY ID 04-2002-009, SCHEDULE NO. 01-2001-007

WHEREAS, on December 3, 2001, under Roll Call No. 01-3523, the City Council adopted the Resolution Approving Petition and Waiver for the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, and a Petition and Waiver has been duly executed by the owner of property, agreeing thereby to be assessed for the full cost of 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, improvements, the same being attached hereto, and

WHEREAS, on December 3, 2001, under Roll Call No. 01-3524, the City Council adopted the Resolution of Necessity for the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, described as:

Streetscaping improvements north and east of the Hotel Fort Des Moines: This includes additional landscaping and upgrading/replacing sidewalks, streetlights, and street paving for both sides of 10<sup>th</sup> Street, between Walnut and Mulberry Streets and the south side of Walnut from 10<sup>th</sup> Street west, approximately 170 feet, to the west boundary of the Hotel. All construction will meet or exceed the city standards for sidewalk and street improvements.

WHEREAS, on December 6, 2001, the City Clerk certified the preliminary plat and schedule of assessments for said 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, to the Polk County Treasurer and said preliminary assessments became a lien upon the benefited properties as provided in 384.65(5) of the Code of Iowa, and

WHEREAS, a copy of said Roll Call Nos. 01-3523, 01-3524, and the City Clerk's December 6, 2001, certificate and a copy of said preliminary plat and schedule of assessments (Schedule No. 01-2001-007) are attached to this roll call for reference, and

WHEREAS, the Interim City Engineer now recommends that the special assessments be eliminated as said project was placed on hold due to the economic downturn following the events of September 11, 2001, and has never been reinitiated by the property owner.

★ **Roll Call Number**

**Agenda Item Number**

EX. 1

Date December 8, 2014

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the Resolution of Necessity for the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, approved on December 3, 2001, under Roll Call No. 01-3524 be and is hereby rescinded.

BE IT FURTHER RESOLVED: That the liens placed upon benefited properties resulting from said Resolution of Necessity as certified to the Polk County Treasurer on December 6, 2001, be, and are hereby released.

BE IT FURTHER RESOLVED: That the City Clerk be and is hereby authorized and directed to send a certified copy of this resolution to the Polk County Treasurer along with a Notice of Release of Assessment Proceedings and a copy of the rescinded preliminary plat and schedule of assessments (Schedule 01-2001-007).

BE IT FURTHER REOLVED: That the City Clerk be and is hereby directed to publish notice of said rescission of the Resolution of Necessity, and release of liens against benefited property on December 10, 2014, in the Des Moines Register, the Clerk shall also send by certified mail to all property owners whose property is subject to rescission of assessment a copy of said notice, said mailing to be made on December 11, 2014.

Moved by \_\_\_\_\_ to adopt.

Form Approved: \_\_\_\_\_

Kathleen Vanderpool  
Deputy City Attorney

Sponsor: T.M. Franklin Cownie Mayor

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
<b>TOTAL</b>				

**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

★ Roll Call Number  
01-3523

Agenda Item Number  
28 B

Date December 3, 2001

**RESOLUTION APPROVING PETITION AND WAIVER**

The Council discussed the matter of constructing improvements, generally described as 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007.

A petition and waiver, duly executed by owners of property to be assessed for the proposed public improvements, was officially filed with the Clerk of said City.

**RESOLUTION APPROVING PETITION AND WAIVER**

WHEREAS, a Petition and Waiver has been duly executed by the owner of property agreeing thereby to be assessed for the full cost of 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, improvements, the same being attached hereto; and

WHEREAS, upon investigation it is found that the holders of all liens and encumbrances against said benefited property to be assessed pursuant to said Petition and Waiver have executed and agreed to and have subordinated their liens to the provisions of same; and

WHEREAS, the following action is deemed appropriate:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the aforesaid Petition and Waiver attached hereto be and the same is hereby approved and accepted for and on behalf on this City, subject to Legal Department review of leinholders and approval of Petition and Waiver form.

Moved by Hensley to adopt.

FORM APPROVED Terrence L. Timmins  
Terrence L. Timmins  
Deputy City Attorney

12-27-01

Terry,  
For your review and approval.

from John McKee  
OK Terrence L. Timmins

12/31/01 TR

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
DANIELS	<input checked="" type="checkbox"/>			
COLEMAN	<input checked="" type="checkbox"/>			
FLAGG	<input checked="" type="checkbox"/>			
HENSLEY	<input checked="" type="checkbox"/>			
MCPHERSON	<input checked="" type="checkbox"/>			
BROOKS	<input checked="" type="checkbox"/>			
VLASSIS	<input checked="" type="checkbox"/>			
TOTAL	7			

I, DONNA V. City hereby Council of said date, among o  
IN WITNESS hand and affi: written.

Donna V. Boettel Baker Mayor

Donna V. Boettel Baker City Clerk

★ Roll Call Number  
01-3524

Date December 3, 2001

Agenda Item Number  
28 C

RESOLUTION OF NECESSITY FOR  
10TH STREET STREETScape FROM WALNUT STREET TO MULBERRY STREET,  
ACTIVITY ID 04-2002-009, SCHEDULE NO. 01-2001-007  
ORDERING CONSTRUCTION OF SAID PROJECT,  
APPROVING PRELIMINARY PLAT AND  
SCHEDULE OF ASSESSMENTS AND ESTIMATE OF COST

WHEREAS, this Council deems it advisable and necessary that street paving improvements, generally described as the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, be constructed within the City of Des Moines, Iowa which improvements are more particularly described in detail hereafter; and

WHEREAS, it is proposed that said improvements be constructed under the authority granted in Division IV of the City Code of Iowa; and

WHEREAS, a petition and waiver agreement relating to said proposed improvements has been signed by all of the property owners to be benefited by the construction of said work and said petition and waiver agreement has been officially filed in the office of the City Clerk and by resolution adopted by the Council, approved and accepted for and on behalf of said City; and

WHEREAS, pursuant to the terms of the petition and waiver agreement, the benefited property owner has waived any and all legal requirements covering the construction of said improvements and the normal special assessment procedure to be followed for a project of this type, and has requested therein that the City proceed with the letting of the construction contract and the construction of the work at the earliest possible date; and

WHEREAS, the City Engineer has caused to be prepared a preliminary plat and schedule of assessments and estimate of cost which items have been examined by this Council and are deemed suitable for the purpose intended and are now officially on file in the Office of the City Clerk for public inspection; and

WHEREAS, before said work, covered by the petition and waiver agreement, may be contracted for, the City Engineer must prepare plans, specifications, form of contract documents and estimate of construction costs to be presented for Council adoption at a later date; it is also necessary to hold a public hearing thereon and a public letting for the taking of construction bids at a later date.

★ Roll Call Number

01-3524

Agenda Item Number

28C

Date December 3, 2001

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

Section 1. That the petition and waiver agreement, hereinabove referred to, was approved and accepted for and on behalf of the City by resolution of the City Council adopted on December 3, 2001 .

Section 2. That this Council hereby determines that it is necessary and advisable to construct street paving improvements, generally described as the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, Activity ID 04-2002-009, Schedule No. 01-2001-007, and as described in further detail hereinafter in Section 3 of this resolution.

Section 3. That said proposed improvements to be constructed are described as follows:

Streetscaping improvements north and east of the Hotel Fort Des Moines: This project includes additional landscaping and upgrading/replacing sidewalks, streetlights, and street paving for both sides of 10<sup>th</sup> Street, between Walnut and Mulberry Streets and the south side of Walnut from 10<sup>th</sup> Street west, approximately 170 feet, to the west boundary of the Hotel. All construction will meet or exceed the city standards for sidewalk and street improvements.

Section 4. That the proposed assessment district to be benefited and subject to assessment, is set out in the preliminary plat and schedule of assessments hereinabove referred to.

Section 5. That said preliminary plat and schedule of assessments and estimate of costs, hereinabove mentioned, are hereby adopted and approved as the proposed plat and schedule and estimate of cost for this project.

Section 6. That the cost of said improvements will be assessed to the properties within the boundaries of the assessment district, pursuant to the proposed plat and schedule for the project.

Section 7. That, if any difference remains between the amount which is derived from cash payments made by property owners after the assessments are levied and the proceeds to be received from the sale of special assessment bonds issued against any unpaid assessments and the total cost of said improvement project, such difference shall be paid for from the proceeds to be derived from the issuance and sale of general obligation bonds of said City and/or from such other funds of said City as may be legally used for such purposes.

★ Roll Call Number  
01-3524

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Date December 3, 2001

Section 8. That the action of this Council in this resolution shall constitute the action the Council would normally take in adopting a preliminary resolution ordering construction of said project, approving the preliminary plat and schedule of assessments and estimate of costs, introducing and adopting a resolution of necessity, ordering preparation of detailed plans, specifications, contract documents, and estimate of cost, and any and all other preliminary Council action on a special assessment project.

Section 9. That the City Engineer is hereby directed to prepare detailed plans, specifications, contract documents, and estimate of cost for presentation to this Council for adoption at a later date.

Moved by Henaleu to adopt.

FORM APPROVED: Terrence L. Timmins  
Terrence L. Timmins  
Deputy City Attorney

76

COUNCIL ACTION	YEAS	NAVS	PASS	ABSENT
DANIELS	✓			
COLEMAN	✓			
FLAGG	✓			
HENSLEY	✓			
MCPHERSON	✓			
BROOKS	✓			
VLASSIS	✓			
TOTAL	7			

CERTIFICATE

I, DONNA V. BOETEL-BAKER, 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.

Paul Daniels  
Mayor

Donna V. Boetel-Baker  
City Clerk

01-3524  
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CERTIFICATE OF THE CLERK OF THE CITY OF DES MOINES, IOWA  
TO BE FILED, INCLUDING EXHIBITS ATTACHED, WITH THE COUNTY  
TREASURER OF POLK COUNTY, IOWA, AFTER ADOPTION OF THE  
RESOLUTION OF NECESSITY.

STATE OF IOWA        )  
COUNTY OF POLK    )  SS  
CITY OF DES MOINES )

NOTICE OF PENDING ASSESSMENT PROCEEDINGS

I, Donna V. Boetel-Baker, Clerk of the City of Des Moines, Iowa, do hereby certify that the Council of Des Moines, Iowa, has adopted a Resolution of Necessity for certain street paving improvements, said improvements being generally designated in said resolution and in prior proceedings of the Council as the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street. A true copy of said Resolution of Necessity as originally proposed and Resolution with respect to the adoption of the Resolution of Necessity proposed for the 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street, are hereby attached, marked Exhibits "1" and "2".

I further certify that attached hereto, marked Exhibit "3" and "4" are true and correct copies of the preliminary plat and schedule of assessments, said schedule setting out the estimated assessments proposed to be against benefited properties for the purpose of paying a portion of the total overall cost of said improvements. Said assessments are a lien upon the benefited properties from the date of filing a certified copy of the Resolution of Necessity, the plat and the schedule of assessments, as provided in 384.65 (5) of the Code of Iowa.

Donna V. Boetel Baker  
Clerk of Des Moines, Iowa

(SEAL)

I, hereby certify that on the 6<sup>th</sup> day of December, 2001, there was filed with me as County Treasurer of Polk County, State of Iowa, pursuant to 384.51 and 384.65(5) of the Code of Iowa, an executed copy of the certificate of the Clerk of Des Moines, Iowa, as hereinabove set out, and a copy of the items therein referred to as Exhibits "1", "2", "3" and "4".

Witness my hand and the County Seal at Des Moines, Iowa, this 6<sup>th</sup> day of December, 2001.

By: John A. Gove Second Deputy  
County Treasurer

I hereby certify that on the 5 day of December, 2001, there was filed with me as Building Permit Official of the City of Des Moines, Iowa, an executed copy of the certificate of the City of Des Moines, Iowa, hereinabove set out, and a copy of the items therein referred to as Exhibits "1" and "2".

[Signature]  
Building Permit Official of the  
City of Des Moines, Iowa

PRELIMINARY  
 10<sup>TH</sup> STREET STREETSCAPING FROM WALNUT STREET TO MULBERRY STREET  
 ASSESSMENT SCHEDULE NO. 01-2001-007  
 ACTIVITY ID 04-2002-009

Streetscaping improvements north and east of the Hotel Fort Des Moines: This project includes additional landscaping and upgrading/replacing sidewalks, streetlights, and street paving for both sides of 10<sup>th</sup> Street, between Walnut and Mulberry Streets and the south side of Walnut from 10<sup>th</sup> Street west, approximately 170 feet, to the west boundary of the Hotel. All construction will meet or exceed the city standards for sidewalk and street improvements.

**ASSESSED COST:**

ITEM NO.	DESCRIPTION	ESTIMATED UNITS			AMOUNT
		UNIT	TOTAL	UNIT PRICE	TOTAL
1	10 <sup>th</sup> Street Streetscape from Walnut to Mulberry Streets and the south side of Walnut Street from 10 <sup>th</sup> Street to approximately 170' west complete, including design and construction inspection, with total assessed cost not to exceed \$300,000.00.	LS	1	\$ 300,000.00	\$ 300,000.00
Total Construction Cost and Total to be Assessed					\$ 300,000.00

**CITY COST:**

ITEM NO.	DESCRIPTION	AMOUNT
	None	\$ 0.00

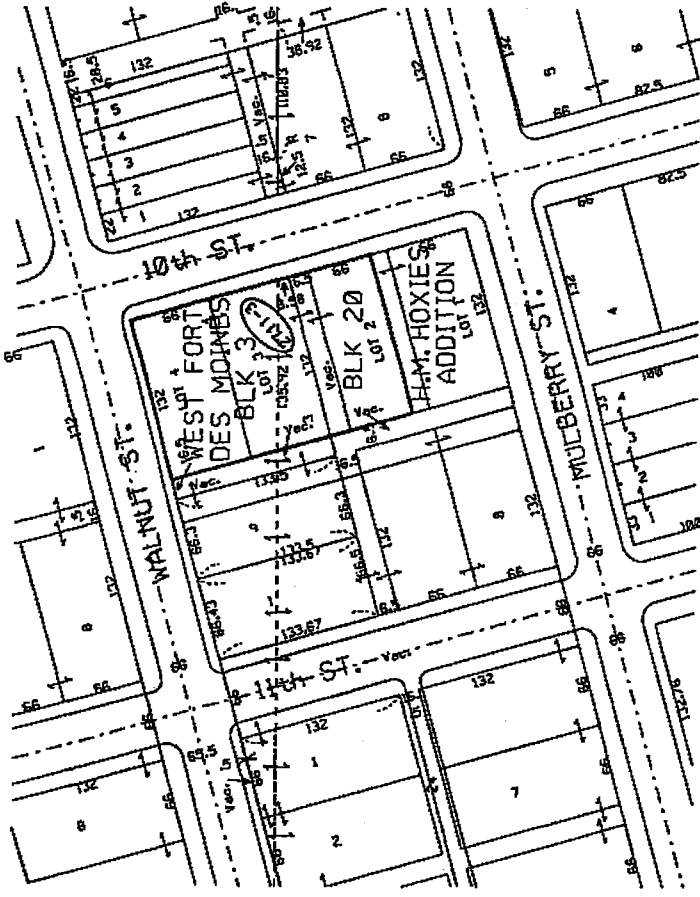


EXHIBIT A

PRELIMINARY  
 10<sup>TH</sup> STREET STREETSCAPING FROM WALNUT STREET TO MULBERRY STREET  
 ASSESSMENT SCHEDULE NO. 01-2001-007  
 ACTIVITY ID 04-2002-009

DESCRIPTION OF PROPERTY	CERTIFICATE NUMBER	OWNERS NAME PROPERTY ADDRESS	VALUATION W/IMPROVEMENT IN PLACE	ASSESSMENT POINTS	TO BE ASSESED	DEFICIT OR SUBSIDY
020/02711-003-000 Vac Alley Lyg N & Adj & N 52F Lt 2 & All Lot 3 Blk 20 H M Hoxies Addition; and Lots 3 & 4 Block 3 West Fort Des Moines	01-00000-00	T PRINCIPANT HOTEL COMPANY 1000 WALNUT STREET	N/A NET TO BE ASSESSED	N/A	\$300,000.00 \$300,000.00	

# DISTRICT 2



## LEGEND

- ASSESSMENT BOUNDARY
- AREA CALCULATION LINE
- C.L.R.
- CORNER LOT REDUCTION
- LOT LINE
- OWNERSHIP LINE
- EXISTING PAVEMENT
- PROPOSED PAVEMENT
- PARCEL

10th STREETSCAPE  
 WALNUT STREET TO MULBERRY STREET  
 ACTIVITY I.D. 04-2002-009

PETITION AND WAIVER

THIS AGREEMENT made and entered into by and between the City of Des Moines, Iowa, hereinafter called the CITY, and the undersigned property owner in said City, hereinafter called the PROPERTY OWNER, WITNESSETH:

WHEREAS, the City proposes to construct street paving improvements ("improvements") in said City; and

WHEREAS, the undersigned Property Owner desires that the improvements be constructed to benefit its respective property and that special assessments be levied against its property as hereinafter described opposite its name. The general description and location of said improvements being as follows:

Streetscaping improvements north and east of the Hotel Fort Des Moines: This project includes additional landscaping and upgrading/replacing sidewalks, streetlights, and street paving for both sides of 10<sup>th</sup> Street, between Walnut and Mulberry Streets and the south side of Walnut from 10<sup>th</sup> Street west, approximately 170 feet, to the west boundary of the Hotel. All construction will meet or exceed the city standards for sidewalk and street improvements.

The properties to be assessed are described as follows:

Vac Alley Lyg N & Adj & N 52F Lt 2 & All Lot 3 Bik 20 H M Hoxies Addition; and Lots 3 & 4 Block 3 West Fort Des Moines (District 020, Parcel 02711-003-000).

NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

As soon as practicable, the City shall have the right to cause the above-described improvements to be constructed in accordance with such plans and specifications as it shall deem appropriate. The construction of said improvements shall be under the supervision of the City Engineer.

For the purpose of this Agreement, the City may elect to enter into contract for the construction of said improvements as a part of any contract for a public improvement project entered into prior to the receipt of this instrument as authorized by Section 384.41(2) of the City Code of Iowa.

In consideration of the construction of said improvements, the undersigned Property Owner hereby waives the public hearing on the adoption of the Resolution of Necessity and the mailing and publication of Notice thereof, and all other legal formalities of whatsoever kind or character required by the laws of Iowa to be observed by cities in the construction of said improvements where the expense of such improvements is to be assessed against private property. The undersigned Property Owner hereby expressly waives each and every question of jurisdiction, the intention of the Property Owner being to authorize and direct said City to construct the improvement without requiring any of the formalities or legal proceedings required of cities by the statutes of Iowa.

It is further agreed that when said improvements have been constructed in accordance with the plans and specifications that the City may make assessments against the property of the undersigned Property Owner, the entire actual cost for construction of said improvements as shown on Assessment Schedule No. 01-2001-007, being Exhibit "A" attached hereto and described as:

Streetscaping improvements north and east of the Hotel Fort Des Moines: This project includes additional landscaping and upgrading/replacing sidewalks, streetlights, and street paving for both sides of 10<sup>th</sup> Street, between Walnut and Mulberry Streets and the south side of Walnut from 10<sup>th</sup> Street west, approximately 170 feet, to the west boundary of the Hotel. All construction will meet or exceed the city standards for sidewalk and street improvements.

including the actual cost of engineering, supervision, preparation of assessment schedule, and that said assessments so made shall be a lien upon the property hereinafter described, and the undersigned Property Owner hereby agrees to pay the amount which is thus assessed against its property, and said assessment shall have the same legal force and effect as if all the legal formalities provided by law in such cases had been fully and faithfully performed and observed. In the event that the Property Owner decides not to proceed with this project, the Property Owner agrees to pay all design costs and administrative cost associated with the project to the date of project termination. The undersigned Property Owner hereby expressly waives every objection to said assessment, any limitation of the amount thereof as a percentage of valuation and any right to defer or postpone payment of the assessment. Said assessment shall be paid by the undersigned Property Owner within the time provided by Statute for the payment of special assessments for such improvements. 10<sup>th</sup> Street Streetscape from Walnut Street to Mulberry Street shall be assessed with 15 annual installments. All property owners entitled to agricultural deferment under Chapter 384 of the City Code of Iowa hereby waive their right to such deferral.

The amount and proportion of the cost of the improvements, to be paid by the Property Owner, shall be ascertained and determined by the Engineers and by them reported to the City Council which shall make such changes or alterations as they may require, and when said assessments are finally passed by the Council and by it levied, they shall constitute the assessments against the property.

The City's Engineer has prepared a preliminary schedule of assessments for each of the properties included in the district, which schedule is attached hereto as Exhibit "A". Property owners and City agree that no final assessments will exceed the amount shown on said Exhibit "A" by more than 0%.

Property Owner hereby authorizes the City Council to pass any Resolution requisite or necessary to order and secure said improvements, to provide for the construction of the same and to make the assessments herein provided for, without further notice to said Property Owner, and any such Resolution may contain recitals that said improvements are ordered or made by the Council without petition of property owners, without in any way qualifying this petition or releasing the Property Owner from its obligation to pay the assessments levied against its property for the cost of said improvements and to issue improvement bonds payable out of said assessments.

Property Owner warrants that its real estate described below is free and clear of all liens and encumbrances other than for ordinary taxes, except for such liens as are held by lienholders hereinafter listed and designated as signers of this Petition and Waiver, who by execution of this Petition consent to the subordination of their lien to the special assessment liens herein described. Property Owner further agrees to subordinate the sale of any part of its listed property to the terms of this Petition and Waiver, and, upon failure to do so, to pay the full amount of the assessment on demand. Each lienholder designated below, by execution of this Petition and Waiver, agrees and consents that its lien or liens shall be subordinated to the lien of the assessments levied pursuant hereto.

Property Owner agrees that this Petition and Waiver shall be effective and binding from and after the approval hereof by resolution of the City Council.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001

Presented to the City Council on December 3, 2001

Approved by the City Council on \_\_\_\_\_, 20\_\_\_\_

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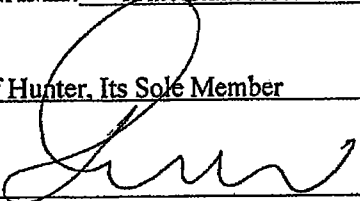
City Clerk

PROPERTY OWNER

ACTIVITY ID 04-2002-009  
SCHEDULE NO. 01-2001-007

OWNER'S NAME: Principiant Hotel Company, LC

By: Jeff Hunter, Its Sole Member

By:   
Signature

Date: 11-30-01

Witness: Marsh A. Kephart

LIENHOLDER'S NAME: Iowa State Bank

By: 

By: C.E.O.  
Signature-Title, if any

Date: November 29, 2001

Witness: Marsh A. Kephart, V.P.

LIENHOLDER'S NAME: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_  
Signature-Title, if any

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

PROPERTY ADDRESS: 1000 Walnut Street

DESCRIPTION OF PROPERTY:

Vac Alley Lyg N & Adj & N 52F Lt 2 & All Lot 3 Blk  
20 H M Hoxies Addition; and Lots 3 & 4 Block 3  
West Fort Des Moines (District 020, Parcel 02711-  
003-000)