



Date June 11, 2018

CITY'S CONSENT TO EASEMENT FOR BUILDING SETBACK ON THE PUBLIC ALLEY WEST OF THE KIRKWOOD BUILDING AT 400 WALNUT STREET

WHEREAS, on April 3, 2017, by Roll Call No. 17-0631, the City Council approved an Urban Renewal Agreement for Sale of Land for Private Redevelopment with 5th and Walnut Parking LLC (the "Developer"), represented by Justin Mandelbaum, whereby the Developer has purchased the site of the former Fifth and Walnut Parking Garage, and has agreed to redevelop that property by the construction of the following improvements to be known as "The Fifth" in consideration of certain financial incentives to be provided by the City:

- The construction of a parking garage fronting on 5th Street in the middle of the property;
The construction of a movie theater or hotel (the "South Building") fronting on Court Avenue; and,
The construction of a building (the "Residential Building") fronting on Walnut Street and having at least 200 residential dwellings. If the South Building is not a hotel the Residential Building shall also contain a hotel; and,

WHEREAS, the proposed Residential Building is now planned to be at least 40 stories tall and is separated from the Kirkwood Building at 400 Walnut Street by a 16.5 feet wide north/south alley (the "Public Alley") owned by the City of Des Moines; and

WHEREAS, in the absence of an easement or other agreement to the contrary, the Residential Building and the Kirkwood Building would each be allowed to use one-half of the width of the intervening Public Alley to satisfy the required setback under the Building and Fire Codes; and,

WHEREAS, the Developer seeks to construct and maintain the Residential Building with a greater amount of windows and other openings in its exterior east wall at and above the 4th floor than would be allowed by the Building and Fire Codes if it is limited to the use of only one-half of the width of the Public Alley for setback purposes; and,

WHEREAS, the portion of the Kirkwood Building adjoining the Public Alley is only two stories tall, and the air space above the Kirkwood Building is owned and controlled by the Kirkwood Commons Condominium Association, Inc. (the "Association"); and,

WHEREAS, the Association has granted the Developer an Easement for Building Setback whereby the Association has agreed that the portion of any new building and any expansion of the existing Kirkwood Building, that lies above the elevation of the existing parapet wall adjoining the Public Alley, shall maintain the required Building and Fire Code setback from the east line of the Public Alley; and,



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WHEREAS, the Easement for Building Setback operates to allow that portion of the planned Residential Building at and above the fourth floor to use the entire Public Alley for purposes of satisfying the required setback under the Building and Fire Codes; and,

WHEREAS, the Developer has requested that the City consent to the imposition of the Easement for Building Setback on the Public Alley.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. The City of Des Moines does hereby consent to the imposition of the Easement for Building Setback on the Public Alley as described above.
2. The Mayor and City Clerk are hereby authorized and directed to execute the City's Consent to Easement for Building Setback on behalf of the City. The City Clerk is further authorized and directed to forward the signed consent to the Legal Department for release to and recording by the Developer.

MOVED by _____ to adopt.

FORM APPROVED:

By: Roger K. Brown, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL.

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