

★ Roll Call Number

11-0181

Agenda Item Number

18A

Date February 14, 2011

**RESOLUTION AUTHORIZING AND APPROVING RELEASE OF STIPULATION ON VACATED
ARMY POST ROAD BETWEEN SW 5TH AND SW 6TH STREET
PREVIOUSLY CONVEYED TO THOMAS J. AKERS AND LOIS L. AKERS**

WHEREAS, on September 25, 2006, by Roll Call No. 06-1917, the City Council of the City of Des Moines approved the sale and conveyance of the North 25 feet of Army Post Road between SW 5th Street and SW 6th Street, legally described below as thereafter vacated on October 23, 2006 by Ordinance No. 14,596, to Thomas J. Akers and Lois L. Akers (“Grantees”) for \$1,200.00:

The vacated North 25.00 feet of the South 75.00 feet of the West 460.80 feet of the East 1532.80 feet of Army Post Road right-of-way being in the Southeast 1/4 of Section 28, Township 78 North, Range 24 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa

WHEREAS, the sale of said property to the Grantees was subject to certain terms, including stipulations in anticipation of the Army Post Road widening project relating to the future purchase of the property by the City under the threat of eminent domain and the option to re-purchase the property for a period of 20 years from the date of recording the conveyance deed, which stipulations were included in the Quit Claim Deed granting the property to the Grantees as filed on November 6, 2006 in Book 11936, Page 357 in the office of the Polk County Recorder; and

WHEREAS, said Deed also includes a no-build restriction prohibiting the Grantees from placing structures, buildings or similar improvements over or within the above-described property; and

WHEREAS, the Grantees are in the process of developing the property described above, together with other adjacent real property, and including the construction of parking lot improvements within the property, and the Grantees’ lenders have requested that the City release the above-described stipulations regarding property purchase and clarify the language regarding the no-build restriction as described in the Quit Claim Deed, in the form of Release as on file in the office of the City Clerk; and

WHEREAS, City Engineering and Real Estate Division staff have determined that the deed stipulations described above are no longer necessary for the property, as the City has no current or anticipated need for this specific property for the Army Post Road widening project or otherwise; that the no-build restriction can be clarified to allow for parking lot improvements for Grantees that were not originally intended by the City to be prohibited by said restriction; and that additional compensation is not due to the City as consideration for this release and clarification; and

WHEREAS, the Release specifically provides for the City to retain its right to seek the property by eminent domain if determined necessary in the future; to continue to prohibit construction of structures, buildings and similar improvements upon or within the property; and further states that all remaining terms and conditions set forth in the Quit Claim Deed remain binding upon Grantees and Grantees’ successors and assigns.

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

1. The release of the property stipulations regarding property purchase, and clarification of the language regarding the no-build restriction, all as set forth in the Quit Claim Deed filed November 6, 2006 in

★ Roll Call Number

11-0181

Agenda Item Number

18A

Date February 14, 2011

Book 11936, Page 357 in the office of the Polk County Recorder, which Deed granted a vacated portion of Army Post Road as described above to Thomas L. Akers and Lois L. Akers, be and is hereby approved.

2. The Mayor is authorized and directed to sign the Release of Deed Stipulation and the City Clerk is authorized and directed to attest to the Mayor's signature.
3. The City Clerk is authorized and directed to forward the original of said Release of Deed Stipulation to the Real Estate Division of the Engineering Department for the purpose of causing said document to be recorded.
4. Upon receipt of payment of recording costs from the Grantees, the Real Estate Division Manager is authorized and directed to forward the original of the Release of Deed Stipulation to the Polk County Recorder's Office for the purpose of causing this document to be recorded.
5. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Release of Stipulation to the property owners.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED APPROVED
T. M. Franklin 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.

Diane Rauh City Clerk