

52
Change
in



Doc ID: 030352500010 Type: GEN
Kind: EASEMENT
Recorded: 12/15/2015 at 08:42:47 AM
Fee Amt: \$52.00 Page 1 of 10
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00162002

BK 15837 PG 704-713

Prepared by: David DeForest Colvig, Real Estate Coordinator, 400 Robert D. Ray Dr., Des Moines, IA 50309 515-283-4541
RETURN TO: Return Address: Real Estate Division - City Hall, 400 Robert Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Permanent Easement for Building Encroachment
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Confluence on Third LLC
Legal Description: Easement Area: Described below on page 1
Benefitted Property: Described below on page 1-2

PERMANENT EASEMENT FOR BUILDING ENCROACHMENT

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 sum of Thirteen Thousand Forty-three and No/100 Dollars (\$13,043.00), receipt of which is hereby acknowledged, does hereby convey unto Confluence on Third LLC, an Iowa Limited Liability Company (hereinafter referred to as the "Grantee"), a Permanent Easement for Building Encroachment under, over, through and across the following described property (hereinafter referred to as the "**Easement Area**"):

THE NORTH 3 FEET OF VACATED MARKET STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING ALL OF BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

for the purpose of the Grantee using, repairing, and maintaining the footings, foundations, balconies, and stoops as part of the multi-family apartment building project at 123 Southwest Third Street and encroachments from such building into the Easement Area, more specifically described as follows:

BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AN

OFFICIAL PLAT, NOW INCLUDED IN THE CITY OF DES MOINES, POLK COUNTY, IOWA; (hereinafter referred to as the "**Benefited Property**").

This Permanent Easement for Building Encroachment shall be subject to the following terms and conditions:

1. **EASEMENT RUNS WITH LAND.** This Permanent Easement for Building Encroachment 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 on Grantee and Grantee's successors and assigns.
2. **DURATION.** This Permanent Easement for Building Encroachment shall remain in full force and effect for the life of the existing 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 Permanent Easement for Building Encroachment, 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 and Owner chooses not to reconstruct within six months of the date of destruction, then this Permanent Easement for Building Encroachment 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 and this Permanent Easement for Building Encroachment shall continue in force, if such reconstruction is commenced within nine months of the date of such destruction and diligently pursued to completion.
3. **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. 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 attorney's fees and the value of any services rendered by the Legal Department of the City or any other officers or employees of the City.
4. **ENFORCEMENT OF EASEMENT TERMS.** The terms and obligations set forth in this Permanent Easement for Building Encroachment are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Permanent Easement for Building Encroachment shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantee agrees to pay and discharge all costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Permanent Easement for Building Encroachment.

5. **ACCEPTANCE.** This Permanent Easement for Building Encroachment shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.

Signed this 10th day of December, 2015.

ATTEST:

By: *Diane Rauh*
Diane Rauh, City Clerk

CITY OF DES MOINES, IOWA

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

FORM APPROVED:

Lisa A. Wieland
Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 10th day of December, 2015, 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 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. 15-2002 of City Council on the 23rd day of November, 2015 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.

Laura L. Baumgartner
Notary Public in the State of Iowa



ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Permanent Easement for Building Encroachment and agrees to be bound by the terms set forth above.

Confluence on Third, LLC

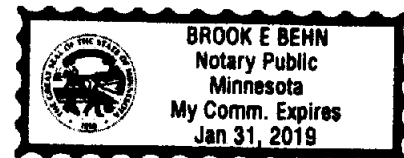
By: Jeff Koch

Title: MEMBER - CONFLUENCE ON THIRD

STATE OF MN)
COUNTY OF Henn) ss:

On this 1st day of December 2015, before me, the undersigned, a Notary Public in the State of MN, personally appeared Jeff Koch, who, being by me duly sworn did state that he is a Manager / ~~Member~~ of Confluence on Third, LLC, a manager-managed / ~~member-managed~~ Delaware limited liability company; that the foregoing instrument was signed on behalf of the company; and that he, as a manager / ~~member~~, acknowledged the execution of the instrument to be the voluntary act and deed of the company.

Brook E Behn
Notary Public in the State of Minnesota



Vine St

EXHIBIT A

SW 2nd St

BLOCK 29

FORT DES MOINES

SOUTH LINE
OF BLOCK 29

3 FT

SW 3rd St

Market St

Legend

 VACATION AND EASEMENT AREA

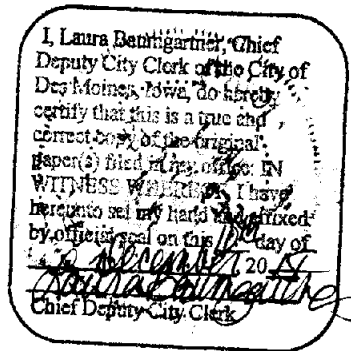




Roll Call Number

15-2002

Date November 23, 2015



Agenda Item Number

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HOLD HEARING FOR VACATION OF A PORTION OF MARKET STREET RIGHT-OF-WAY ADJOINING 123 SOUTHWEST 3RD STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO CONFLUENCE ON THIRD LLC FOR \$13,043.00

WHEREAS, Confluence on Third LLC is the owner of the real property bounded by SW 2nd Street, SW 3rd Street, Vine Street and Market Street, locally known as 123 Southwest Third Street, which property is being developed into multi-family apartments; and

WHEREAS, Confluence on Third LLC has requested the vacation of a portion of Market Street between Southwest 2nd Street and Southwest 3rd Street ("City Right-of-Way"), hereinafter more fully described, and has requested that the City of Des Moines, Iowa ("City") convey a Permanent Easement for Building Encroachment in the vacated City Right-of-Way to Confluence on Third LLC to allow for building footings, entrance stoops and balconies for a proposed multi-family dwelling; and

WHEREAS, Confluence on Third LLC has offered to the City the purchase price of \$13,043.00 for the vacation and purchase of the Permanent Easement for Building Encroachment in the City Right-of-Way, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

WHEREAS, on October 26, 2015, by Roll Call No. 15-1776, the City Council of the City of Des Moines, Iowa, received a recommendation from the City Plan and Zoning Commission approving a request from Confluence on Third LLC for the vacation of 3 feet of the north side of Market Street right-of-way adjoining property in the vicinity of 123 Southwest 3rd Street; and

WHEREAS, on November 9, 2015, by Roll Call No. 15-1860, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such permanent easement be set down for hearing on November 23, 2015, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate said City Right-of-Way and convey the Permanent Easement for Building Encroachment was given as provided by law, setting forth the time and place for hearing on said proposal; 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, any and all objections to said proposed vacation and conveyance of the Permanent Easement for Building Encroachment as described below are hereby overruled, and the hearing is closed.



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2. There is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a portion of Market Street adjoining 123 Southwest 3rd Street, more specifically described as follows:

THE NORTH 3 FEET OF MARKET STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING ALL OF BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and conveyance of a Permanent Easement for Building Encroachment within such vacated City right-of-way, as described below, to Confluence on Third LLC for \$13,043.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

THE NORTH 3 FEET OF VACATED MARKET STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING ALL OF BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating City Right-of-Way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easement and copies of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



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(Council Communication No. 15-620)

Moved by Hensley to adopt.

APPROVED AS TO FORM:


Lisa A. Wieland, Assistant City Attorney

pin

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN				✓
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	6			1

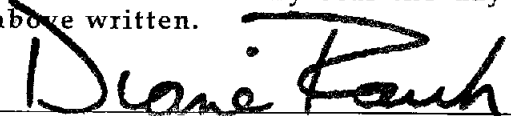
MOTION CARRIED

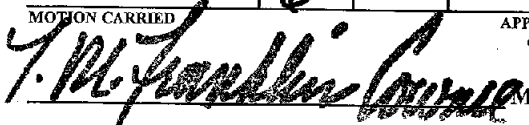
APPROVED

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


T. M. Franklin Mayor



I, Laura Baumgartner, Chief Deputy City Clerk of the City of Des Moines, Iowa, do hereby certify that this is a true and correct copy of the original page(s) filed in my office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal on this 14th day of November, 2015.
Laura Baumgartner
Chief Deputy City Clerk

AFFIDAVIT OF PUBLICATION

State of Iowa

County of Polk, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register on the following dates:

Ad No.	Start Date:	Run Dates:	Cost:
0000852307	11/13/15	11/13/15	\$42.28

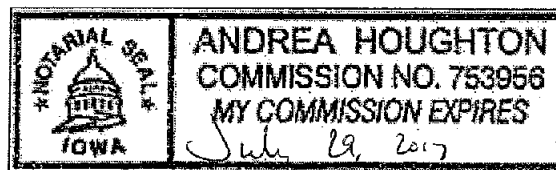
Copy of Advertisement
Exhibit "A"

[Signature]
VP/Register Weekly Newspapers

Subscribed and sworn to before me by said affiant this

14th day of November, 2015

[Signature]
Notary Public in and for Polk County, Iowa



P09410: \$42.28

**NOTICE OF PROPOSAL TO
VACATE AND CONVEY
CITY-OWNED PROPERTY**

NOTICE IS HEREBY GIVEN that the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating a portion of Market Street right-of-way between Southwest 2nd Street and Southwest 3rd Street adjoining 123 Southwest Third Street, legally described as follows:

THE NORTH 3 FEET OF MARKET STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING ALL OF BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

NOTICE IS FURTHER GIVEN, that the City Council of the City of Des Moines, Iowa, has adopted a resolution setting a hearing relating to a proposal that if the City Council first decides to vacate the above-described right-of-way, then the City of Des Moines proposes to convey a Permanent Easement for Building Encroachment in such vacated right-of-way as legally described below, to Confluence on Third LLC for \$2,525.00:

THE NORTH 3 FEET OF VACATED MARKET STREET RIGHT OF WAY LYING SOUTH OF AND ADJOINING ALL OF BLOCK 29, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

NOTICE IS FURTHER GIVEN that the City Council of the City of Des Moines, Iowa, will consider the adoption of the proposed vacation ordinance and approval of the proposed conveyance after a public hearing to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, on November 23, 2015. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

PUBLISHED IN THE DES MOINES REGISTER ON NOVEMBER 13, 2015.