

City of Detroit
OFFICE OF THE CITY CLERK

Janice M. Winfrey
City Clerk

Robin R. Underwood, CMC
Deputy City Clerk

DEPARTMENTAL REFERENCE COMMUNICATION

Friday, May 29, 2015

To: The Department or Commission Listed Below

From: Janice M. Winfrey, Detroit City Clerk

The following petition is herewith referred to you for report and recommendation to the City Council.

In accordance with that body's directive, kindly return the same with your report in duplicate within four (4) weeks.

DPW - CITY ENGINEERING DIVISION LAW DEPARTMENT
PLANNING AND DEVELOPMENT DEPARTMENT

708 *The Kales Grand Circus Park, LLC, request for use and maintenance of the existing and in-service pedestrian tunnel which extends from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams, Detroit, MI.*

708

DETROIT
CITY CLERK

PETITION TO DETROIT CITY COUNCIL

2015 MAY 20 P 12:48

The Honorable City Council
Attn: Office of the City Clerk
200 Coleman A. Young Municipal Center
Detroit, Michigan 48226

Re: Petition for use and maintenance of the existing and in-service pedestrian tunnel which extends from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams, Detroit Michigan.

1. PETITIONER: This Petition is made by The Kales Grand Circus Park, LLC, a Michigan limited liability company (the "**Petitioner**"). Petitioner is the current owner of the Kales Building, located at 76 W. Adams, Detroit, Michigan (the "**Building**"). The Petitioner was the lender to Kales Building LLC, the former owner of the Building (the "**Former Owner**"). The Former Owner defaulted on its loan obligations to Petitioner and Petitioner foreclosed its mortgage on the Building on August 8, 2013, and has succeeded to the interest of the Former Owner.

2. PERMISSIONS SOUGHT: The Former Owner previously submitted Petition No. 918 to the Detroit City Council for the installation and maintenance of a pedestrian tunnel from the Grand Circus Parking Garage to the Building. Specifically, Petition No. 918 requested the following:

- a) Permission to install and maintain encroachment(s) consisting of a Pedestrian Tunnel and a proposed Canopy, within West Adams Street, 60 feet wide, between Woodward Avenue, 120 feet wide and Park Avenue, 60 feet wide. The proposed Pedestrian Tunnel will penetrate a portion of the northern property line of Grand Circus Park, then connecting to the existing underground parking structure.
- b) Approval of existing encroachments into the public rights-of-way as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co, provided to the City Engineering.
- c) Approval of various additional minor encroachments, all of which are described in detail on Exhibit "A" attached hereto

Petition No. 918 was approved by a resolution adopted by the Detroit City Counsel on July 30, 2003, and approved by the Mayor's office on August 12, 2003 (Exhibit "A" attached hereto)(the "**Resolution**").

Petitioner, as the Building's new owner, is making the exact same requests as were made by the Former Owner in Petition No. 918, with the following two (2) exceptions:

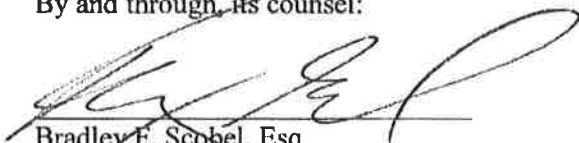
- a) The Petitioner is not requesting permission to "install" the Pedestrian Tunnel. The Pedestrian Tunnel has been installed and has been in service more than ten (10) years. As such, no installation will be performed and there is no need for a temporary construction easement.
- b) The legal description that was used in the original petition contained certain errors and was not complete description of the tunnel. George Jerome & Co., the company which drafted the original legal description, has revised and corrected the legal description, which corrected legal description is attached hereto as Exhibit "B".

3. RATIONAL: The Pedestrian Tunnel was designed to alleviate surface pedestrian travel over W. Adams Road to and from the Building and the parking garage. The use of the tunnel has the effect of reducing surface congestion and increasing both pedestrian and vehicular safety. The continuing use and maintenance of the Pedestrian Tunnel is beneficial to the City of Detroit as well as the general welfare of its residents and visitors. As the current petition requests the same approvals which were granted on July 30, 2003 by the City Council, there is no burden or detriment placed upon the City of Detroit by approving the current petition for the continued use and operation of the Pedestrian Tunnel and the other encroachments as set forth in the original Petition No. 918.

4. REQUEST: Wherefore, the Petitioner, The Kales Grand Circus Park, LLC, respectfully requests that the Detroit City Council approve this Petition on the same terms and conditions as were set forth in its approval of Petition No. 918, as set forth in the Resolution dated July 30, 2003, attached hereto as Exhibit "A", and that the Agreement and Grant of Easement for Pedestrian Tunnel recorded in Liber 39100 Page 344, Wayne County Records, be amended to reflect the correct legal description of the tunnel attached hereto as Exhibit "B".

Respectfully submitted:

The Kales Grand Circus Park, LLC,
a Michigan limited liability company
By and through its counsel:



Bradley F. Scobel, Esq.
SEYBURN-KAHN PC
2000 Town Center, Ste. 1500
Southfield, Michigan 48075
(248) 353-7620
bscobel@seyburn.com

Exhibit A

**DETROIT CITY COUNCIL RESOLUTION ADOPTED ON JULY 30, 2003
APPROVED BY THE MAYOR'S OFFICE ON AUGUST 12, 2003**

Department of Public Works
City Engineering Division
July 21, 2003

Honorable City Council:
Re: Petition No. 918 — Kales Building LLC, for installation and maintenance of a pedestrian tunnel extending from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams.

Petition No. 918 of "Kales Building LLC," requests permission to install and maintain encroachment(s) consisting of a Pedestrian Tunnel and a proposed Canopy, within West Adams Street, 60 feet wide, between Woodward Avenue, 120 feet wide and Park Avenue, 60 feet wide. The proposed Pedestrian Tunnel will penetrate a portion of the northern property line of Grand Circus Park, then connecting to the existing underground parking structure. Therefore, within the attached resolution, the City of Detroit Recreation Department requests your Honorable Body's approval of that part of the encroachment within Grand Circus Park. In order to excavate and construct the Pedestrian Tunnel within W. Adams and Grand Circus Park, a Temporary Construction Easement will be created to facilitate the installation.

The Petitioner also requests that your Honorable Body approve existing encroachments into the public rights-of-way as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Developer.

The Pedestrian Tunnel layout has been designed in order to minimize disturbance of existing underground utilities. The sub-surface Pedestrian Tunnel Encroachment will be approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure.

The proposed Canopy encroachment will be 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.
- Vent Pipe approximately 1.00 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into Park Ave.
- Decorative Trim approximately 0.40 feet into Park Ave.
- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.
- Steel Pipe cover approximately 0.66 feet into the Public Alley.
- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.
- 2-Vent pipes approximately 0.95 feet into the Public Alley.
- Building encroaches approximately 0.06 feet (max.) into the Public Alley.

The petition was referred to the City Engineering Division — DPW and the Recreation Department for investigation (utility review) and report. This is our report.

The Detroit Water and Sewerage Department (DWSD) reports the proposed changes in public rights-of-way will not affect DWSD services. There appear to be no existing DWSD facilities in the involved area. DWSD has no objection to the requested encroachments. Whenever DWSD facilities are involved, minimum clearances must be maintained and DWSD provisions for encroachments must be followed.

The Public Lighting Department (PLD) has had meetings with the developer to work out a solution for the previous PLD objections to the requested changes in public rights-of-way. The petitioner has submitted a revised sketch and letter explaining the deviation from the original submittals. Based on these discussions the developer has made the following commitments and the PLD has no objections once completed:

- The pedestrian tunnel will be rerouted so as to avoid relocation of PLD installations.
- The tunnel elevations will be redesigned to maintain proper vertical clearance from PLD conduit banks.
- Detailed design drawings will be forwarded to PLD Engineering Division to make sure that PLD specifications are complied with.

The Traffic Engineering Division — DPW reports having no objection to the requested changes in public rights-of-way, provided that the following requirements are complied with:

- A provision for complete access for disabled persons must be incorporated in the tunnel walkway design.
- Separate, prior approval shall be obtained for any construction plans including but not limited to traffic detour plan for W. Adams and other impacted streets in the area.
- It shall be insured that after construction, W. Adams is restored to its original condition.

DTE Energy/MichCon Gas Company reports no objections to the changes in public rights-of-way provided developer & contractor contact, prior to construction beginning, Michcon's Public Improvement Department at 313-577-7323 to coordinate crossing 4" HP (150 psig) gas main. DTE Energy/MichCon Gas Company records indicate VERY CLOSE PROXIMITY TO EXISTING 4" GAS MAIN WITH THE PROPOSED ENCROACHMENT.

SBC will require access to maintain existing conduit runs within W. Adams Ave right-of-way.

DTE/Detroit Edison reports that arrangements have been made with the contractors for the developer, to encase existing Fiber Duct in concrete, at a cost of approximately \$30,000.00. The contractor will be responsible for supporting the duct run throughout the excavating process.

The Petitioner or its assigns must obtain permits from City Engineering Division — DPW for any street openings, backfill, surface restoration, barricade, or occupancy of city rights-of-way to install and/or maintain the encroachments. The Petitioner will be required to make use of "MISS DIG" facilities before the placement of any encroachments(s), and then become a participating member of that organization. This will minimize the chance of damage to the underground tunnel beneath W. Adams.

City Engineering Division — DPW also requires the Petitioner to submit certified "as built" drawings, a map and survey, showing the exact location of the completed encroachments.

All other involved City departments and privately owned utility companies have reported no objections to the proposed encroachments. Where appropriate provisions protecting utility installations are part of the resolution.

I am recommending adoption of the attached resolution.

Respectfully submitted,
SUNDAY JAIYESIMI
City Engineer
City Engineering Division — DPW

By Council Member Bates:

Whereas, Petition No. 918 of "Kales Building LLC," ("Petitioner") requests permission to install and maintain encroachment(s) consisting of a Pedestrian Tunnel and a proposed Canopy, within West Adams Street, 60 feet wide, between Woodward Avenue, 120 feet wide and Park Avenue, 60 feet wide. The proposed Pedestrian Tunnel will penetrate a portion of the northern property line of Grand Circus Park, connecting to the existing underground parking structure. Therefore, within the attached resolution, the City of Detroit Recreation Department requests your Honorable Body's approval of that part of the encroachment within Grand Circus Park. In order to excavate and construct the Pedestrian Tunnel within W. Adams and Grand Circus Park, a Temporary Construction Easement will be created to facilitate the installation; and

Whereas, The Petitioner, "Kales Building LLC," ("Petitioner") also requests that your Honorable Body approve existing encroachments into the public rights-of-way as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Petitioner; and

Whereas, The Pedestrian Tunnel shall be constructed and utilized in connection with a Parking Agreement entered into between the City and the Petitioner as authorized under separate Resolution (the "Parking Agreement") to provide access to the Grand Circus underground parking structure for the residents and users of the Kales Building, therefore be it Resolved, The City Engineering Division — DPW is hereby authorized and directed to issue permits to "Kales Building LLC," the Petitioner for property 76 West Adams Street, Detroit, Michigan 48226, to install, improve, repair and maintain the Pedestrian Tunnel, a proposed Canopy and pre-existing building encroachments (the "Encroachments") into the public rights-of-way, adjoining a parcel described as follows:

Lots 17 and 18 "A Plat of Park Lots 84, 85 and 86", as recorded in Liber 7, Page 27 Deeds, Wayne County Records; commonly known as 76 West Adams.

• The subsurface Pedestrian Tunnel Encroachment will be approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure.

- The proposed Canopy encroachment will be 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.

- Vent Pipe approximately 1.00 feet into W. Adams.

- 2-Sign frames approximately 0.80 feet into W. Adams.

- 2-Sign frames approximately 0.80 feet into Park Ave.

- Decorative Trim approximately 0.40 feet into Park Ave.

- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.

- Steel Pipe cover approximately 0.66 feet into the Public Alley.

- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.

- 2-Vent pipes approximately 0.95 feet into the Public Alley.

- Building encroaches approximately 0.06 feet (max.) into the Public Alley.

Provided, The Petitioner, "Kales Building LLC," or its assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction. Also, when it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for construction or maintenance of encroachments such work shall be according to detailed permit application drawings submitted to the City Engineering Division — DPW and Recreation Department prior to any public right-of-way construction; and further

Provided, The Recreation Department is hereby authorized and directed to drill (or cause to be drilled) and execute (for and on behalf of the City of Detroit) a "Easement Agreement" with The Petitioner, "Kales Building LLC," for that part of the encroachment within Grand Circus Park; and further

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings and Safety Engineering Department. The Encroachments shall be constructed and maintained under their rules and regulations; also in accord with plans submitted to and approved by these departments; including the Recreation Department (if necessary), the Municipal Parking Department (if necessary), the Public Lighting Department (if necessary), the Water and Sewerage Department (if necessary), and the Traffic Engineering Division — DPW (if necessary); and further

Provided, That all costs for the construction, maintenance, permits and use of the encroachments shall be borne by The Petitioner, "Kales Building LLC," or its assigns; and further

Provided, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments, shall be borne by The Petitioner, "Kales Building LLC," or its assigns. Should damages to utilities occur as a result of construction, use, maintenance or repair of the Encroachments. The Petitioner, "Kales Building LLC," or its assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

Provided, If it becomes necessary to repair or replace the utilities located or to

be located within the public rights-of-way, by acceptance of this permission, The Petitioner "Kales Building LLC," (owners) for themselves, or their assigns, (by acceptance of permits for construction near underground utility lines, conduits, or mains) waives all claims for damages to the encroaching installations and agree to pay all costs incurred in their removal (or alteration), if removal (or alteration) becomes necessary; and further

Provided, That The Petitioner, "Kales Building LLC," shall file with the Finance Department an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance by The Petitioner, "Kales Building LLC," of the terms thereof. Further, The Petitioner, "Kales Building LLC," shall agree to pay all claims, damages or expenses that may arise out of the use, repair and maintenance of the proposed Encroachments; and further

Provided, The property owned by The Petitioner, "Kales Building LLC," and the Encroachment shall be subject to proper zoning or regulated use (Board of Zoning Appeals Grant) including City ordinances; and further

Provided, That only those rights created under this resolution run for the benefit of Kales Building LLC, its lenders, residents, tenants, successors and assigns; and further

Provided, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW after a engineering investigation and report by the city and the agents of the owners; and further

Provided, This resolution is revocable at the will, whim or caprice of the City Council, and The Petitioner, "Kales Building LLC," acquires no implied or other privileges hereunder not expressly stated herein, however, there shall be no revocation or termination of the permit to allow the Pedestrian Tunnel Encroachment without a resolution from the Detroit City Council directing such revocation or termination before revoking such permit, the City Council may consider engineering reports and studies from City departments and owners of the Kales Building; and further

Provided, That the encroachment permit shall not be assigned or transferred without the written approval of the City Council; and be it further

Resolved, The City Engineering Division — DPW and Recreation Department is hereby authorized to permit a "Temporary Construction Easement" in order for the Petitioner, "Kales Building LLC," to excavate a portion of West Adams Street, 60 feet wide, and Grand Circus Park in order to install the proposed Tunnel Encroachment. Said "Temporary Construction Easement" is described in two parts, as follows:

Proposed "Temporary Construction Easement" in W. Adams right-of-way.

Commencing at the Southwesterly corner of Lot 18 of the "Plat of Park Lots 84, 85 and 86" as recorded in Liber 7, Page 27 of Deeds, Wayne County Records; thence continuing along said Northerly line of W. Adams Ave. N.60°14'45"E., 35.00 feet; thence S.29°45'15"E., 13.00 feet; thence S.88°15'32"E., 82.03 feet; thence S.30°00'52"E., 4.15 feet, to a point on the Southerly line of said W. Adams Ave.; thence S.60°14'45"W., 73.37 feet, along the Southerly line of said W. Adams Ave.; thence N.73°05'33"W., 46.03 feet; thence North 29°45'15"W., 25.52 feet to the Point Of Beginning.

Proposed "Temporary Construction Easement" in Grand Circus Park.

Commencing at the Southwesterly corner of Lot 18 of the "Plat of Park Lots 84, 85 and 86" as recorded in Liber 7, Page 27 of Deeds, Wayne County Records; thence N.60°14'45"E., 80.24 feet, along the Northerly line of W. Adams Ave.; thence S.29°45'15"E., 13.00 feet; thence S.88°15'32"E., 82.03 feet; thence S.30°00'52"E., 4.15 feet, to a point on the Southerly line of W. Adams Ave. and the Point Of Beginning.

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings and Safety Engineering Department (if necessary). The "Construction Easements" shall be maintained under their rules and regulations; also in accord with plans submitted to and approved by these departments; including the Recreation Department, the Public Lighting Department (if necessary), the Water and Sewerage Department (if necessary), and the Traffic Engineering Division — DPW (if necessary); and further

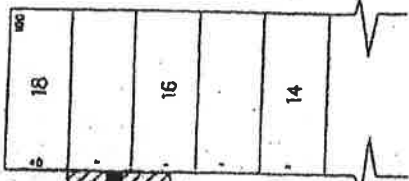
Provided, That no rights in the public places or streets shall be considered waived by this permission which is granted expressly on the condition that said "Construction Easements" shall be restored to a condition satisfactory to the City Engineering Division — DPW and the Recreation Department; and

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds; and be it further

Resolved, The Petitioner, "Kales Building LLC," and/or contractor(s), shall submit two copies of "as built" drawings sealed by a professional engineer registered in the State of Michigan to the City Engineering Division — DPW and the Recreation Department within 30 days after installing the encroachments; subject to city specifications, permits and inspections. Said "as built" drawings shall furnish a complete means of identifying and ascertaining the precise position of every part of the "encroachments" with courses, distances, and depth throughout (containing City of Detroit datum), so that it may be determined with certainty where any portion of the "encroachment" has been built. Copies of the certified "as built" map(s) and survey(s) shall be an "appendix" to this resolution. City Engineering Division — DPW shall record (or cause to be recorded) one copy of the "appendix" in the Wayne County Register of Deeds.

PETITION NO. 518
 KALES BUILDING
 60 PROFORMA CONSTRUCTION SER., LLC
 11211 FARMBONT DR.
 JOSEPH C. SATO JR.
 PHONE NO. 1-588-353-6333
 FAX NO. 1-586-677-7566

PARK 66 FT. WD.



DAMS 60 FT. WD.

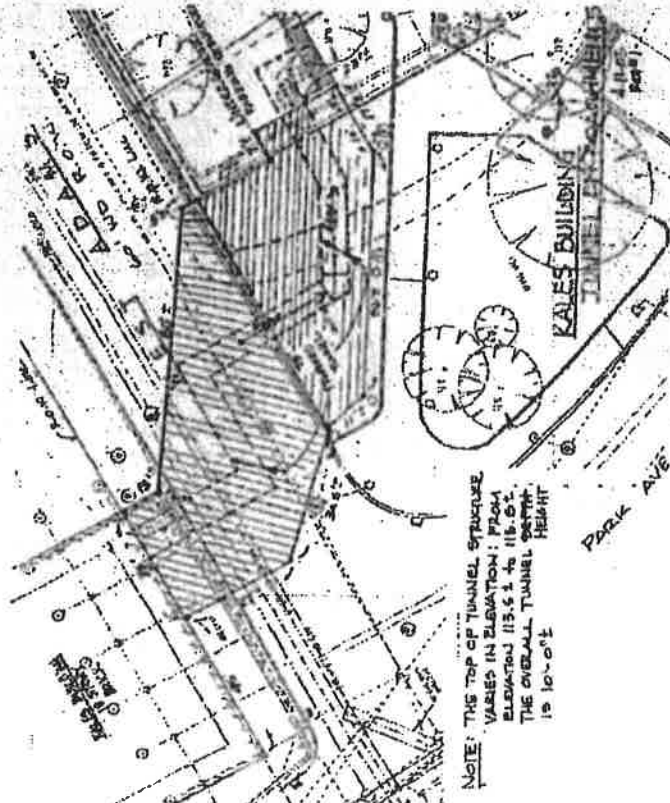
GRAND CIRCUS PARK

NOTE: SEE ATTACHMENTS FOR FURTHER DETAILS OF ENCLOSURE

AREA OF ENCROACHMENT

CARTO 348

01-21-03		CITY OF DETROIT CITY ENGINEERING DEPARTMENT 224 W. WABASH DETROIT, MI 48226-4300 PHONE NO. 313.224.2000
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NOTE: THE TOP OF TUNNEL STRUCTURE
 VARIES IN ELEVATION: FROM
 ELEVATION 115.5 TO 116.0 FT.
 THE OVERALL TUNNEL DEPTH
 IS 10'-0"

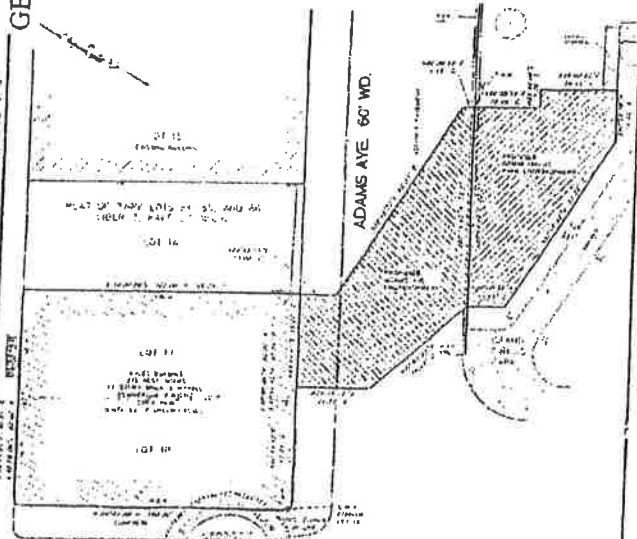
GEORGE JEROME & CO.



PROPOSED ENCROACHMENT
GRAND CIRCUS PARK
EXHIBIT B

CONFORMANCE WITH THE CITY OF CHICAGO'S ZONING ORDINANCES AND THE CITY OF CHICAGO'S LOCAL DESCRIPTION OF PROPERTY (AS FURNISHED BY C.D.P.)

EXCAVATION
AREA



PARK AVE. 60' WD.

GRAPHIC SCALE
1" = 20'

LEGEND
 - - - - - PROPOSED
 - - - - - EXISTING
 - - - - - CHANGES

CONFORMANCE WITH THE CITY OF CHICAGO'S ZONING ORDINANCES AND THE CITY OF CHICAGO'S LOCAL DESCRIPTION OF PROPERTY (AS FURNISHED BY C.D.P.)

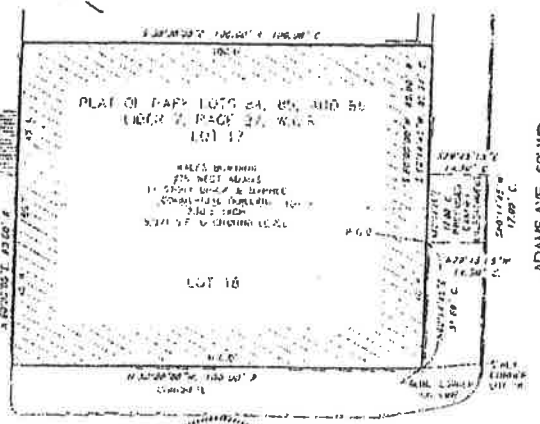
DATE: 11/14/14

GEORGE JEROME & CO.



PROPOSED ENCROACHMENT
CANOPY ENCROACHMENT
EXHIBIT B

CONFORMANCE WITH THE CITY OF CHICAGO'S ZONING ORDINANCES AND THE CITY OF CHICAGO'S LOCAL DESCRIPTION OF PROPERTY (AS FURNISHED BY C.D.P.)



PARK AVE. 60' WD.

GRAPHIC SCALE
1" = 20'

LEGEND
 - - - - - PROPOSED
 - - - - - EXISTING
 - - - - - CHANGES

CONFORMANCE WITH THE CITY OF CHICAGO'S ZONING ORDINANCES AND THE CITY OF CHICAGO'S LOCAL DESCRIPTION OF PROPERTY (AS FURNISHED BY C.D.P.)

DATE: 11/14/14

Adopted as follows:
 Yeas — Council Members Bates, K. Cockret, Jr., S. Cockret, McPhail, Tinsley-Talabi, Watson, and President Mahaffey
 — 7
 Nays — None

Exhibit B



PROPOSED EASEMENT
FOR UNDERGROUND PEDESTRIAN TUNNEL

CONSULTING MUNICIPAL & CIVIL ENGINEERS • SURVEYORS • 28304 HAYES • ROSEVILLE, MI 48066 • (586)774-3000
LEGAL DESCRIPTION OF PROPERTY (AS FURNISHED BY CLIENT)

SHEET 2 OF 2

Proposed Tunnel Easement Under Adams Avenue and Grand Circus Park:

A subsurface easement for a pedestrian tunnel in the City of Detroit, Wayne County, Michigan connecting the Kales Building at the corner of Park Avenue and Adams Avenue with the underground parking structure located in Grand Circus Park, said encroachment being more particularly described as follows:

Commencing at the southwesterly corner of Lot 18 of The Plat of Park Lots 84, 85, and 86 (known as Brown's Subdivision of said Park Lots) as recorded in Liber 7, Page 27 of Deeds, Wayne County Records; thence North 60 degrees 14 minutes 45 seconds East 80.24 feet along the northerly line of Adams Avenue to the southeasterly corner of Lot 17 of said Plat and the Point of Beginning of this Easement;

Thence South 29 degrees 47 minutes 28 seconds East 43.37 feet;

Thence South 89 degrees 53 minutes 20 seconds East 61.55 feet;

Thence North 60 degrees 08 minutes 33 seconds East 12.02 feet;

Thence South 30 degrees 00 minutes 00 seconds East 28.92 feet;

Thence South 60 degrees 08 minutes 33 seconds West 20.20 feet;

Thence North 89 degrees 53 minutes 20 seconds West 98.98 feet;

Thence North 29 degrees 47 minutes 28 seconds West 53.67 feet to a point on the northerly line of Adams Avenue;

Thence North 60 degrees 14 minutes 45 seconds East 40.52 feet along said northerly line of Adams Avenue to the Point of Beginning of this Easement.

Said Easement containing 0.12 acres, more or less.

SURVEY BY P.J.
DRAWN BY D.J.C.

JOB NO. 25-714
DATE 04-20-15

CITY OF DETROIT

INTER-OFFICE MEMORANDUM

TO: The Honorable City Council

FROM: James Edwards
Senior Assistant Corporation Counsel

DATE: June 10, 2015

Re: **Petition #708, The Kales Grand Circus Park, LLC, request for use and maintenance of the existing and in-service pedestrian tunnel which extends from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams, Detroit, MI.**

The attached Petition #708 was referred to the Law Department among others by the City Clerk at the request of City Council. This is the Law Department's requested report regarding that petition.

We have reviewed the petition, a copy of which is attached, and have also reviewed the report of the City Engineering Division of the Department of Public Works, a copy of which is also attached. Our review of these documents confirms that the resolution sought by the petition would have the effect of continuing permission to maintain the pedestrian tunnel that was constructed pursuant to approval granted by the City Council on July 30, 2003. The need for this approval results from a change in the ownership of the building and will have no effect on the structure of the pedestrian tunnel as it presently exists.

Having reviewed the petition and the recommendation of the City Engineer's Office, the Law Department joins in recommending approval of the proposed resolution by the City Council.



June 9, 2015

Honorable City Council:

RE: Petition No. 708 – The Kales Grand Circus Park, LLC, request for use and maintenance of the existing and in-service pedestrian tunnel extending from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams.

Petition No. 708 of "The Kales Grand Circus Park, LLC" requests permission to transfer and maintain the existing encroachment(s) consisting of a Pedestrian Tunnel, a Canopy and additional minor encroachments within West Adams Avenue, 60 feet wide, between Woodward Avenue, 120 feet wide and Park Avenue, 60 feet wide.

This petition is being made by the current owner of the Kales Building, located at 76 W. Adams Avenue, Detroit, Michigan. The Petitioner was the lender to "Kales Building, LLC" the former owner of the building. The former owner defaulted on its loan obligations to the petitioner. The petitioner foreclosed its mortgage on the building on August 8, 2013 and has succeeded to the interest of the former owner.

On July 30, 2003, your Honorable Body approved petition 918 (2003 J.C.C. pages 2440 – 2444) by Kales Building, LLC (the former owner) for installation and maintenance of the pedestrian tunnel, the proposed canopy encroachment and some minor existing building encroachments as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Developer. The encroachments were permitted but are not to be assigned or transferred without the written approval of City Council.

The petitioner is making the exact same requests as were made by the former owner in petition no. 918 (2003) except the permission to install the encroachments. The only other variance from the petition no. 918 (2003) is a more complete and accurate description of the pedestrian tunnel has been provided by George Jerome & Co, Professional Surveyors.

The Pedestrian Tunnel layout was designed in order to minimize disturbance of existing underground utilities. The subsurface Pedestrian Tunnel Encroachment is approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure.

Michael Duggan. MAYOR



The existing Canopy encroachment is 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The other existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.
- Vent Pipe approximately 1.00 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into Park Ave.
- Decorative Trim approximately 0.40 feet into Park Ave.
- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.
- Steel Pipe cover approximately 0.66 feet into the Public Alley.
- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.
- 2-Vent pipes approximately 0.95 feet into the Public Alley.
- Building encroaches approximately 0.06 feet (max.) into the Public Alley.

The petition was referred to the City Engineering Division – DPW for investigation (utility review) and report. This is our report.

All involved City departments and privately owned utility companies have reported no objections to the encroachments. Where appropriate, provisions protecting utility installations are part of the resolution.

The provisions for construction and maintenance by the previous owner were met and it is the recommendation of City Engineering – DPW that the encroachment permit be transferred under the same terms and conditions as set forth in approval of petition 918 approved by your Honorable Body on July 30, 2003; amended to remove the installation details including the temporary construction easements; also amended to reflect the correct legal description of the tunnel.

I am recommending adoption of the attached resolution.

Respectfully submitted,

Richard Doherty, P.E. City Engineer
City Engineering Division-DPW

JK/

Cc: Ron Brundidge, Director, DPW
Mayor's Office – City Council Liaison
Law Department

Michael Duggan. MAYOR

BY COUNCIL MEMBER: _____

WHEREAS, On July 30, 2003, your Honorable Body approved petition 918 (2003 J.C.C. pages 2440 – 2444) by Kales Building, LLC (the former owner) for installation and maintenance of the pedestrian tunnel, the proposed canopy encroachment and some minor existing building encroachments as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Developer; and

WHEREAS, the Petitioner, The Kales Grand Circus Park, LLC, respectfully requests that your Honorable Body approve the transfer of the approved encroachments on the same terms and conditions as were established in the approval of July 30, 2003; so the property owners may continue to use, operate and maintain the pedestrian tunnel and the other approved encroachments; and

WHEREAS, The Pedestrian Tunnel was constructed and is utilized in connection with a Parking Agreement entered into between the City and the Petitioner as authorized under separate Resolution (the "Parking Agreement") to provide access to the Grand Circus underground parking structure for the residents and users of the Kales Building, therefore be it

RESOLVED, The City Engineering Division – DPW is hereby authorized and directed to issue permits to "The Kales Grand Circus Park, LLC" the Petitioner for property 76 West Adams Street, Detroit, Michigan 48226, to improve, repair and maintain the Pedestrian Tunnel, the Canopy and pre-existing building encroachments (the "Encroachments") into the public rights-of-way, adjoining a parcel described as follows:

Lots 17 and 18 "A Plat of Park Lots 84, 85 and 86", as recorded in Liber 7, Page 27 Deeds, Wayne County Records; commonly known as 76 West Adams.

- The subsurface Pedestrian Tunnel Encroachment will be approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure. The underground pedestrian tunnel being more particularly described: Commencing at the southwesterly corner of Lot 18 "A Plat of Park Lots 84, 85 and 86(known as Browns Subdivision of said Park Lots)", as recorded in Liber 7, Page 27 Deeds, Wayne County Records; thence N60°14'45"E 80.24 feet along the northerly line of Adams Avenue to the southeasterly corner of Lot 17 of said Plat and the Point of Beginning; thence S29°47'28"E 43.37 feet; thence S89°53'20"E 61.55 feet;

thence N60°08'33"E 12.02 feet; thence S30°00'00"E 28.92; thence S60°08'33"W 20.20 feet; thence N89°53'20"W 98.98 feet; thence N29°47'28"W 53.67 feet to a point on the northerly line of Adams Avenue; thence N60°14'45"E 40.52 feet; along said northerly line of Adams Avenue to the Point of Beginning, containing 0.12 acres more or less.

- The proposed Canopy encroachment is 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The other existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.
- Vent Pipe approximately 1.00 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into Park Ave.
- Decorative Trim approximately 0.40 feet into Park Ave.
- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.
- Steel Pipe cover approximately 0.66 feet into the Public Alley.
- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.
- 2-Vent pipes approximately 0.95 feet into the Public Alley.
- Building encroaches approximately 0.06 feet (max.) into the Public Alley;

PROVIDED, The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction for maintenance. Also, when it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for construction or maintenance of encroachments such work shall be according to detailed permit application drawings submitted to the City Engineering Division-DPW and Recreation Department prior to any public right-of-way construction; and further

PROVIDED, The Recreation Department is hereby authorized and directed to draft (or cause to be drafted) and execute (for and on behalf of the City of Detroit) or transfer a "Easement Agreement" with The Petitioner, "The Kales Grand Circus Park, LLC" for that part of the encroachment within Grand Circus Park; and further

PROVIDED, That the necessary permits shall be obtained from the City Engineering Division-DPW and the Buildings and Safety Engineering Department. The Encroachments shall be maintained under their rules and regulations; also in accord with plans submitted to and approved by these departments; including the Recreation Department (if necessary), the Municipal Parking Department (if necessary), the Public Lighting Department (if necessary), the Water and Sewerage Department (if necessary), and the Traffic Engineering Division-DPW (if necessary); and further

PROVIDED, That all costs for the maintenance, permits and use of the encroachments shall be borne by The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns; and further

PROVIDED, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments, shall be borne by The Petitioner, "The Kales Grand Circus Park, LLC" or assigns. Should damages to utilities occur as a result of construction, use, maintenance or repair of the Encroachments, The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

PROVIDED, If it becomes necessary to repair or replace the utilities located or to be located within the public rights-of-way, by acceptance of this permission, The Petitioner "The Kales Grand Circus Park, LLC" (owners) for themselves, or their assigns, (by acceptance of permits for construction near underground utility lines, conduits, or mains) waives all claims for damages to the encroaching installations and agree to pay all costs incurred in their removal (or alteration), if removal (or alteration) becomes necessary; and further

PROVIDED, That The Petitioner, "The Kales Grand Circus Park, LLC" shall file with the Finance Department an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance by The Petitioner, "The Kales Grand Circus Park, LLC" of the terms thereof. Further, The Petitioner, "The Kales Grand Circus Park, LLC" shall agree to pay all claims, damages or expenses that may arise out of the use, repair and maintenance of the proposed Encroachments; and further

PROVIDED, The property owned by The Petitioner, "The Kales Grand Circus Park, LLC" and the Encroachment shall be subject to proper zoning or regulated use (Board of Zoning Appeals Grant) including City ordinances; and further

PROVIDED, That only those rights created under this resolution run for the benefit of "The Kales Grand Circus Park, LLC", its lenders, residents, tenants, successor's and assigns; and further

PROVIDED, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition

satisfactory to the City Engineering Division-DPW after a engineering investigation and report by the city and the agents of the owners; and further

PROVIDED, This resolution is revocable at the will, whim or caprice of the City Council, and The Petitioner, "The Kales Grand Circus Park, LLC" acquires no implied or other privileges hereunder not expressly stated herein, however, there shall be no revocation or termination of the permit to allow the Pedestrian Tunnel Encroachment without a resolution from the Detroit City Council directing such revocation or termination before revoking such permit, the City Council may consider engineering reports and studies from City departments and owners of the Kales Building; and further

PROVIDED, That the encroachment permit shall not be assigned or transferred without the written approval of the City Council; and be it further

PROVIDED, The "as built" drawings sealed by a professional engineer registered in the State of Michigan previously provided to the City Engineering Division-DPW and the Recreation Department after the installation of the encroachments as called for in the resolution of petition 918 approved July 30, 2003, by Detroit City Council (2003 J.C.C. pages 2440 – 2444); shall be an "appendix" to this resolution as recorded in the Wayne County Register of Deeds.

PROVIDED, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.



PROPOSED EASEMENT FOR UNDERGROUND PEDESTRIAN TUNNEL

CONSULTING MUNICIPAL & CIVIL ENGINEERS • SURVEYORS • 28304 HAYES • ROSEVILLE, MI 48068 • (586)774-3000
LEGAL DESCRIPTION OF PROPERTY (AS FURNISHED BY CLIENT)

SHEET 2 OF 2

Proposed Tunnel Easement Under Adams Avenue and Grand Circus Park:

A subsurface easement for a pedestrian tunnel in the City of Detroit, Wayne County, Michigan connecting the Kales Building at the corner of Park Avenue and Adams Avenue with the underground parking structure located in Grand Circus Park, said encroachment being more particularly described as follows:

Commencing at the southwesterly corner of Lot 18 of The Plat of Park Lots 84, 85, and 86 (known as Brown's Subdivision of said Park Lots) as recorded in Liber 7, Page 27 of Deeds, Wayne County Records; thence North 60 degrees 14 minutes 45 seconds East 80.24 feet along the northerly line of Adams Avenue to the southeasterly corner of Lot 17 of said Plat and the Point of Beginning of this Easement;

Thence South 29 degrees 47 minutes 28 seconds East 43.37 feet;

Thence South 89 degrees 53 minutes 20 seconds East 61.55 feet;

Thence North 60 degrees 08 minutes 33 seconds East 12.02 feet;

Thence South 30 degrees 00 minutes 00 seconds East 28.92 feet;

Thence South 60 degrees 08 minutes 33 seconds West 20.20 feet;

Thence North 89 degrees 53 minutes 20 seconds West 98.98 feet;

Thence North 29 degrees 47 minutes 28 seconds West 53.67 feet to a point on the northerly line of Adams Avenue;

Thence North 60 degrees 14 minutes 45 seconds East 40.52 feet along said northerly line of Adams Avenue to the Point of Beginning of this Easement.

Said Easement containing 0.12 acres, more or less.

SURVEY BY P.J.
DRAWN BY D.J.C.

JOB NO. 25-714
DATE 04-20-15