# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE:** **February 23, 2015**

**ITEM:** 503 Restaurant and Nightclub, 1238 8th Street - Approval and Acceptance of Irrevocable Offer of Dedication and Sanitary Sewer Easement – KATJAM Financial Corporation – PC-002584-2015

**Resolution:** **Approval and Acceptance of Irrevocable Offer of Dedication and Sanitary Sewer Easement**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** The Board of Adjustment approved a permitted conditional use permit for 503 Restaurant and Nightclub to be located at 1238 8th Street on February 11, 2015 (PC-002584-2015). As part of the approval of the permitted conditional use permit an irrevocable offer of dedication of five (5) additional feet of public street right-of-way to meet Comprehensive Plan standards and eleven (11) feet of additional sanitary sewer easement to bring the width to minimum design standards were required to be executed.

Exhibit II is a copy of the agreements. For policy purposes, formal acceptance by the City Council of a these agreements is required.

**CITY COUNCIL SUBCOMMITTEE:** Acceptance of this document by Council is a required formality; this item was not presented to the Development and Planning City Council Subcommittee.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Adopt a resolution approving and accepting the irrevocable offer of dedication for right-of-way along 8th Street and a sanitary sewer easement, granted to the City as part of the approval of a permitted conditional use permit for the opening of a nightclub in conjunction with a restaurant at 1238 8th Street.

Lead Staff Member: Brian S. Portz, AICP BP

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | |
| Appropriations/Finance | |
| Legal | |
| Agenda Acceptance | RTJ |

**PUBLICATION(S)** (if applicable)

| | | |
|---|---|---|
| Published In | | |
| Date(s) Published | N/A | |
| Letter sent to surrounding property owners | | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | None | | |
| Date Reviewed | | | |
| Recommendation | Yes ☐ | No ☐ | Split ☐ |

**ATTACHMENTS:**

Exhibit I - Resolution
Exhibit II - Agreements

**EXHIBIT I**

Prepared by: B. Portz Development Services, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

## RESOLUTION

**A RESOLUTION APPROVING AND ACCEPTING AN IRREVOCABLE OFFER OF DEDICATION OF RIGHT-OF-WAY AND A SANITARY SEWER EASEMENT RELATED TO A PERMITTED CONDITIONAL USE PERMIT GRANTED TO 1238 8th STREET FOR OPERATION OF A NIGHTCLUB IN CONJUNCTION WITH A RESTAURANT**

**WHEREAS**, it is the policy of the City of West Des Moines, Iowa to approve and accept all easement and agreements conveying property and other interests to the City; and

**WHEREAS**, the following documents have been presented to the City for approval and acceptance; and

Sanitary Sewer Easement and Irrevocable Offer of Dedication of right-of-way for
that property locally known as 1238 8th Street and legally described as:

Lot 9, Colby's Office Park, an official plat within the City of West Des Moines,
Polk County, Iowa.

**WHEREAS**, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT** the document(s) described above conveying property and other interests to the City of West Des Moines, Iowa, are hereby approved and accepted and shall be filed with the county recorder as appropriate.

**PASSED AND ADOPTED** this 23rd day of February, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

**EXHIBIT II**

Prepared by: B. Portz, Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, IA 50265-0320

## IRREVOCABLE OFFER OF DEDICATION

**THIS AGREEMENT**, made this _____day of_____, 2015, by KATJAM Financial Corporation, hereinafter called "Owner," and the City of West Des Moines, Iowa, hereinafter called "City."

**WHEREAS**, the Owner has submitted a Permitted Conditional Use Permit (PC-002584-2015) for 503 Restaurant and Nightclub, for review and approval by the City for the property located at 1238 8th Street in West Des Moines, Iowa, and legally described herein below, and;

### LEGAL DESCRIPTION

**Lot 9, Colby's Office Park, an official plat within the City of West Des Moines, Polk County, Iowa.**

**WHEREAS**, in order to provide their full half of the 120 feet of total public street right-of-way that may be necessary for this portion of 8th Street, the Owner will need to deed to the City an additional 5 feet right-of-way adjacent to the existing 8th Street right-of-way line that is currently located 55 feet from the centerline of the 8th Street right-of-way, and;

**WHEREAS**, the Owner agrees to dedicate 5 feet of additional right-of-way adjacent to the existing right-of-way line that is currently located fifty-five feet (55') from the centerline of the 8th Street right-of-way, without cost to the City when the City requests said dedication, and;

**WHEREAS**, the City Council of the City of West Des Moines grants to the Owner a deferment of the dedication of the required right-of-way described above until such time as the City requests said right-of-way, and;

**WHEREAS**, the City has approved the Permitted Conditional Use Permit for 1238 8th Street, project number PC-002584-2015, on the 11th day of February, 2015 subject to the conditions contained herein.

**NOW THEREFORE, FOR THE MUTUAL COVENANTS** herein contained each to the other, the parties agree as follows:

1. The Owner certifies ownership of certain real property legally described above. Said real property was the subject of a Permitted Conditional Use Permit request for 1238 8th Street on the 11th day of February, 2015.

2. The Owner, its heirs, successors in interest or assigns, agree to irrevocably dedicate to the City when requested by the City and at no cost to the City, by deed, five (5) additional feet of permanent and perpetual street right-of-way along the current right-of-way line of 8th Street adjacent to the Owner's property;

3. Approval of the Permitted Conditional Use Permit for the real property described above is conditioned upon the future dedication of right-of-way as described herein and at such time as requested by the City.

4. This Agreement cannot be assigned by the Owner without the express written consent of the City Council of the City of West Des Moines, Iowa. This consent shall not be unreasonably withheld.

5. The Parties agree that this Agreement will be recorded in the Office of the Recorder of Polk County, Iowa.

6. The term "Owner" as used herein shall include Owner's heirs, successors-in-interest and assigns.

7. The City and the Owner agree that the District Court in and for Polk County, State of Iowa, shall have exclusive jurisdiction over the subject matter of this Agreement, and said parties consent to the jurisdiction of the person being in Polk County, Iowa.

8. This Agreement made herein shall survive any sale or transfer of ownership to the property. It is the intent of the parties, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy laws, sale of all or substantially all the assets and liabilities of the Owner, will cause the transfer of this dedicated easement area to the city which shall be made forthwith, without cost to the City.

9. Words and phrases herein shall be construed as in the single or plural number and as masculine, feminine, or neutral gender, according to the context.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement the date set forth above.

**KATJAM FINANCIAL CORPORATION.**

By: _____
James Flynn

**STATE OF IOWA** )
) **SS**
**COUNTY OF POLK** )

On this 6th day of February 2015, before me, the undersigned, a Notary Public in and for said County and State personally appeared James Flynn, to me personally known, who being by me duly sworn, did say that he is owner of KATJAM Financial Corporation., executing the within and foregoing instrument and acknowledged that he executed the same as their voluntary act and deed by it and by them voluntarily executed

Michelle D. Riesenberg
Notary Public in and for said State

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2017

**CITY OF WEST DES MOINES, IOWA**

**By:** _____
Steven K. Gaer, Mayor

**(City Seal)**

**Attest:** _____
Ryan T. Jacobson, City Clerk

**STATE OF IOWA** )
) **SS**
**COUNTY OF POLK** )

On this _____day of _____, 2015, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me known to be the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that the seal affixed is the corporate seal of the City, and that the instrument was signed and sealed on behalf of the City of West Des Moines, Iowa, and that the Mayor and the City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

Prepared by: B. Portz Development Services, PO Box 65320, West Des Moines, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

## SANITARY SEWER EASEMENT(S)

**KNOW TO ALL MEN BY THESE PRESENTS:**

1. Grant of Easement(s).

The undersigned, KATJAM Financial Corporation, (hereinafter referred to as the "Grantor(s)"), owner(s) and/or developer(s) of Lot 9, Colby's Office Park, an official plat within the City of West Des Moines, Polk County, Iowa, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the City of West Des Moines, Iowa, a municipal Corporation (hereinafter referred to as "the City"), a permanent and perpetual easement (hereinafter referred to as "Sanitary Sewer Easement" or "Easement(s)") and right-of-way upon, over, under, through and across the real property, legally described as:

The eastern 11 feet of lot 9, Colby's Office Park, an official plat within
the City of West Des Moines, Polk County, Iowa

2. Use and Purpose of Easement(s).

This Easement shall be granted for the purpose of locating sanitary sewer(s) (hereinafter referred to as "Sewer(s)") and to permit and allow the city to enter at any time upon, over, under, through, and across into said Easement(s) herein described to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair (including the right to place and build additional Sewer(s) therein or to connect and/or join Sewer(s) and appurtenances thereto) and to forever maintain Sewer(s) whenever necessary within the Easement(s) granted herein. No structure or building of any kind whatsoever shall be erected upon property that is the subject of this Easement without the express written consent of the City.

3. Maintenance.

After any maintenance of the Sewer(s), the City agrees, as part of the reconstruction, maintenance and patrolling of the Sewer(s), to restore and replace the Easement area(s) to substantially the same condition as prior to the time of entry or as agreed upon by the City and the Grantor(s), except the City shall not be required to replace landscaping, trees, shrubs, bushes, landscape elements, structures, or underground water systems nor shall the City be required to restore the Easement area by reason of settlement, depression, or any unknown conditions which arise subsequent to the restoration and/or replacing of the easement area; any subsequent restoration by reason of settlement, depression or any unknown conditions shall be the sole responsibility of the Grantor(s) at the Grantor(s)' sole expense.

4. Hold Harmless.

The Grantor(s) agrees to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor(s) arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

5. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the Grantor including, but not limited to, future owners, developers, lessees or occupants. All provisions of this instrument, including benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

6. Jurisdiction and Venue.

The City and the Grantor(s) agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the person being in Polk County, Iowa.

7. Words and Phrases.

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

8. Parties.

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Grantor(s)" shall refer to KATJAM Financial Corporation their heirs, assigns, successors-in-interest, or lessees, if any.

9. Attorney's Fees.

Either party may enforce this instrument by appropriate action, and should they prevail in such litigation they shall recover as part of their costs the reasonable attorney's fees incurred in such litigation.

10. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

11. Paragraph Headings.

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

Dated this 6 day of FEB, 2015.

KATJAM Financial Corporation

By: _____
James Flynn

**STATE OF IOWA** )
)SS
**COUNTY OF** Polk )

On this 6th day of February, 2015, before me, the undersigned, a Notary Public in and for said County and State personally appeared James Flynn, to me personally known, who being by me duly sworn, did say that he is owner of KATJAM Financial Corporation, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act.

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2017

Michelle D. Riesenberg
Notary Public in and for the State of Iowa

**CITY OF WEST DES MOINES, IOWA**

_____
Steven K. Gaer, Mayor

**Attest:**

_____
Ryan T. Jacobson

**STATE OF IOWA** )
)SS
**COUNTY OF POLK** )

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for said County and State personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of West Des Moines, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of West Des Moines, by it and by them voluntarily executed.

_____
Notary Public in and for the State of Iowa