CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **November 2, 2015**

ITEM: 1st Street Redevelopment, Southwest corner of 1st Street and Grand Avenue - Approval and Acceptance of Irrevocable Offer of Dedication – First Street LP – ZC-002834-2015

Resolution: **Approval and Acceptance of Irrevocable Offer of Dedication**

FINANCIAL IMPACT: Undetermined.

BACKGROUND: The City Council approved the 1st Reading of an Ordinance to change the zoning of the properties at the southwest corner of 1st Street and Grand Avenue on October 19, 2015 (ZC-002834-2015). As part of the approval of the zoning change an irrevocable offer of dedication of seven (7) additional feet of public street right-of-way to meet Comprehensive Plan standards is required to be executed.

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

The 2nd Reading, waiving of 3rd Reading and adoption of the PUD Ordinance will be considered at this meeting.

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 Grand Avenue granted to the City as part of the approval of a zoning change to establish the 1st Street Redevelopment PUD for the property located at the southwest corner of 1st Street and Grand Avenue.

Lead Staff Member: Brian S. Portz, AICP BSP

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 - Irrevocable Offer of Dedication

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 RELATED TO A ZONING CHANGE TO ESTABLISH THE 1ST STREET REDEVELOPMENT PUD FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 1ST STREET AND GRAND AVENUE

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 document has been presented to the City for approval and acceptance; an

Irrevocable Offer of Dedication of right-of-way for that property located at the southwest corner of 1st Street and Grand Avenue and legally described as:

LOTS 95 AND 96 OF LINNWILL, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IA, EXCEPT FOR THE EAST 60' FEET; AND LOT 1 OF LINNWILL PLAT 2, AN OFFICIAL PLAT IN 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 described above conveying property and other interests to the City of West Des Moines, Iowa, is hereby approved and accepted and shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 2nd day of November, 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 29th day of October, 2015, by and between First Street, LP hereinafter called "Owner," and the City of West Des Moines, Iowa, hereinafter called "City."

WHEREAS, the Owner has submitted the 1st Street Redevelopment PUD, for review and approval by the City for the property located at the southwest corner of Grand Avenue and 1st Street in West Des Moines, Iowa, and legally described herein below, and;

WHEREAS, in order to provide their full half of the 120 feet of total right-of-way that may be necessary for this portion of Grand Avenue, the Owner will need to deed to the City an additional 7 feet right-of-way adjacent to the existing south right-of-way line that is currently located 53 feet from the centerline of Grand Avenue, and;

WHEREAS, the Owner agrees to dedicate the 7 feet of right-of-way adjacent to Grand Avenue, without cost to the City when the City requests said dedication, and;

WHEREAS, the City Council of the City of West Des Moines as part of the PUD approval, grants to the Owner a deferment of the dedication of the required 7 feet of additional right-of-way along Grand Avenue until such time as the City requests said right-of-way, and;

WHEREAS, the City has approved the 1st Street Redevelopment PUD, project number **ZC-002834-2015**, on the 2nd day of November, 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 as follows:

   LOTS 95 AND 96 OF LINNWILL, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IA, EXCEPT FOR THE EAST 60' FEET;

   AND

   LOT 1 OF LINNWILL PLAT 2, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

   Said real property was the subject of a zoning change on the 2nd day of November, 2015.

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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, permanent and perpetual street right-of-way for the south portion of Grand Avenue, legally-described as follows:

THE NORTH 7 FEET OF LOT 95, EXCEPT THE EAST 60 FEET AND THE NORTH 7 FEET OF THE WEST 168 FEET OF LOT 96, LINNWILL, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IA

3. Approval of the PUD 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.

First Street, LP

By: John Mandelbaum, Managing Partner

John Mandelbaum, Managing Partner

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

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

On this 29 day of October, 2015, before me, the undersigned, a Notary Public in and for said County and State personally appeared John Mandelbaum, to me personally known, who being by me duly sworn, did say that he is Managing Partner of First Street, LP, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the Limited Partnership, by it and by him voluntarily executed.

Michelle D. Riesenberg

Notary Public in and for said State

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, by authority of its City Council as contained in the resolution passed on the day of _____, 2015, 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

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