CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 15, 2017

ITEM: Approval and Acceptance of Lot Tie Agreement and Sanitary Sewer Easement, 3000 University Avenue, The Flats at Valley LLC. – MML2-003173-2016

Resolution: **Approval and Acceptance of Lot Tie Agreement and Sanitary Sewer Easement**

FINANCIAL IMPACT: Undetermined.

BACKGROUND: A Minor Modification to a Site Plan Level 2 (MM-003173-2016) to construct a clubhouse, modify the architecture, and add site amenities for the apartment complex now known as The Flats (formerly Warren House and Warren Terrace) has been administratively approved. As part of the approval of the application, a lot tie agreement is necessary to eliminate non-conformity with regard to setback and a new sanitary sewer easement is needed to grant access to the sanitary sewer on site.

Exhibit II includes copies of these documents. 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 lot tie agreement and sanitary sewer easement between the City of West Des Moines and The Flats at Valley, LLC for the property located at 3000 University Avenue.

Lead Staff Member: Kara V. Tragesser, AICP

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	JBW
Agenda Acceptance	

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: KTragesser 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 A SANITARY SEWER EASEMENT AND A LOT TIE AGREEMENT FOR THE FLATS DEVELOPMENT AT 3000 UNIVERSITY AVENUE (MML2-003173-2016)

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;

Sanitary Sewer Easement – The Flats at Valley, LLC
Lot Tie Agreement – The Flats as Valley, LLC

and

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

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 15th day of May 2017.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

EXHIBIT II

Prepared by: K Tragesser 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, **The Flats at Valley LLC**, 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 east 80.00 feet of the south 30.00 feet of the north 45.00 feet of the east 320 feet of the west one-half (W ½) of that part of the south 980 feet of the north 1,020 feet of the east one-half (E ½) of the northwest fractional one-fourth (NW FRL ¼) of the Section Four (4), Township Seventy-Eight (78) North, Range Twenty-Five (25) West of the 5th P.M., lying west of 28th Street, all now included in and forming a part of the City of West Des Moines, Polk County, Iowa; except the north 10 feet thereof.

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 the initial construction of the Sewer(s), and acceptance by the City, 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 The Flats at Valley, LLC, 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 7th day of November, 2016

By: Kent Roers

Kent Roers, Property Owner

CITY OF WEST DES MOINES, IOWA

_____
Steven Gaer, Mayor

Attest:

_____
Ryan Jacobson, City Clerk

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

On this 9 day of November, 2016 before me, the undersigned, a Notary Public in and for said County and State personally appeared Kent Roers, to me personally known, who being by me duly sworn, did say that he is the property owner, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed, by it and by him voluntarily executed.

ROBERT P. FISCHER
NOTARY PUBLIC - MINNESOTA
My Commission Expires
January 31, 2019

_____
Notary Public in and for the State of Minnesota

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this _____day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Steven Gaer and Ryan 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

Prepared by: K Tragesser City of West Des Moines PO Box 65320 West Des Moines, IA 50265 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RECORD OF LOT TIE

BETWEEN LEGALLY DESCRIBED PROPERTIES:

The east 320 feet of the west ½ of that part of the south 980 feet of the north 1,020 feet of the east ½ of the northwest fractional one fourth of the Section 4, Township 78, Range 25, west of the 5th P.M., lying west of 28th Street, all now included in and forming a part of the City of West Des Moines, Polk County, Iowa, except the north 10 feet thereof

And

The west ½ of that part of the south 980 feet of the north 1,020 feet of the east ¼ of the northwest fractional on fourth of the Section 4, Township 78, Range 25 west of the 5th P.M. lying west of 28th Street, except the east 320 feet thereof, all now included in and forming a part of the City of West Des Moines for public street purposes, Polk County, Iowa

WHEREAS, the City of West Des Moines is currently reviewing a Minor Modification Level 1 to a Site Plan for the construction of a clubhouse and other improvements to the property;

WHEREAS, prior to West Des Moines Development Services Director, or her designee, approving the Minor Modification Level 1 to a Site Plan it is required that the above described lots are tied;

WHEREAS, Roers Investments are the current owner of the parcels located at 3000 University Avenue and 3050 University Avenue and legally described above;

WHEREAS, the City of West Des Moines requests that the property owner tie together the two parcels legally described above to prevent future sale of either parcel independent from the other;

NOW, THEREFORE, the following agreement is made:

Roers Investments, current owners of the two properties legally described above, do hereby impose the following restrictions:

1. The two properties legally described above shall be combined by a Record of Lot Tie.
2. Once joined, no portion of said Properties shall be transferred, sold, or conveyed independent of the remainder of the Property, without replatting the property or receiving specific written approval from the City of West Des Moines.

The terms and conditions of this document are binding upon the Owners 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.

Dated this 7th **day of** November**, 2016.**

Property Owner:

By: Harry Bookey

Property Owner:

By: Harry Bookey

STATE OF Iowa)
COUNTY OF Polk)**SS**

On this 7th day of November, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Harry Bookey, property owner(s), to me personally known, who being by me duly sworn, did say that they are the owners of the two properties legally described above, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Notary Public in and for the State of Iowa

STATE OF Iowa)
COUNTY OF Polk)**SS**

JESSICA MARIE LANGEL
Commission Number 786215
My Commission Expires
September 22, 2017

On this 7th day of November, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Harry Bookey, property owner(s), to me personally known, who being by me duly sworn, did say that they are the owners of the two properties legally described above, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Notary Public in and for the State of Iowa

JESSICA MARIE LANGEL
Commission Number 786215
My Commission Expires
September 22, 2017