CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: July 24, 2017

ITEM: Aspen Valley, 978 84th Street - Approval and Acceptance of Permanent Pedestrian Easement – Marc Kris Modern Homes, Inc. – FP-002883-2015

Resolution: Approval and Acceptance of Permanent Pedestrian Easement

FINANCIAL IMPACT: Undetermined.

BACKGROUND: In November of 2015, the Final Plat for the Aspen Valley subdivision was approved. As construction began on the house on Lot 60 (978 84th Street) it was determined that the public sidewalk along 84th Street was constructed 5 feet onto the property owner's lot instead of within the public right-of-way for 84th Street. Rather than remove the sidewalk from the property owner's property and reconstruct it within the right-of-way, the property owner elected to grant the City an easement for the use of the sidewalk on her property. The proposed pedestrian easement is for the 978 84th Street property only.

For policy purposes, formal acceptance by the City Council of this easement is required.

CITY COUNCIL SUBCOMMITTEE: Acceptance of the associated easement by the Council is a required formality; this specific 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 Permanent Pedestrian Easement, granted to the City.

Lead Staff Member: Brian S. Portz, AICP BP

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	JBW
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

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

SUBCOMMITTEE REVIEW (if applicable)

Committee	NA		
Date Reviewed			
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I	-	Location Map
Exhibit II	-	Resolution
Exhibit III	-	Permanent Pedestrian Easement

978 84th Street

333.3 0 166.67 333.3 Feet

NAD_1983_StatePlane_Iowa_South_FIPS_1402_Feet

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Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT 1

EXHIBIT II

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 A PERMANENT PEDESTRIAN EASEMENT RELATED TO THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE AND THE ASSOCIATED PUBLIC SIDEWALK AT 978 84TH STREET

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve and accept all easements 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:

Permanent Pedestrian Easement

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 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 24th day of July, 2017.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

EXHIBIT III

Prepared by: B. Portz, City of West Des Moines 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

PERMANENT PEDESTRIAN EASEMENT(S)

KNOW TO ALL MEN BY THESE PRESENTS:

1. Grant of Easement(s).

The undersigned, Marc Kris Modern Homes, Inc., (hereinafter referred to as the "Grantor(s)"), owner(s) of the property locally known as 978 84th Street, West Des Moines, Dallas 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 "Pedestrian Easement" or "Easement(s)") and right-of-way upon, over, under, through and across the real property legally described as:

THE EAST 5 FEET OF LOT 60, ASPEN VALLEY, AN OFFICIAL PLAT, WEST DES MOINES, DALLAS COUNTY, IOWA

2. Use and Purpose of Easement(s).

The Grantor(s) hereby covenant and agree to the following:

That this Easement may be utilized by the City for the purpose of allowing the Grantor(s) to install a sidewalk for public use within the private property located in above-described land.

The Grantor(s) further agree that no structure, obstruction, or building of any kind whatsoever shall be placed upon property that is the subject of this Easement without the express written consent of the City.

3. Maintenance.

The Grantor(s) agree that said Easement shall be maintained solely by the Grantor(s). Maintenance by the Grantor(s) shall include, but is not limited to, repair and maintenance of the sidewalk as well as removal of all snow from the sidewalk.

The Grantor(s) shall generally police and survey the Easement to maintain said area free from garbage, debris and other unnatural articles.

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 Dallas 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 Marc Kris Modern Homes, Inc., 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 6th day of July, 2017.

Marc Kris Modern Homes, Inc.

By: Marc Kris Modern Homes

Kris McVicker, Owner

President Owner

STATE OF Iowa)
) SS
COUNTY OF Polk)

On this 6 day of July, 2017, before me personally appeared Kris McVicker, to me personally known, who, being by me duly sworn did say that she is the Owner of Marc Kris Modern Homes, Inc., which is the owner of 978 84th Street executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and by them voluntarily executed.

Lesley Dorland

Notary Public in and for the State of Iowa

LESLEY DORLAND
Commission Number 757320
My Commission Exp. 3-9-18

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

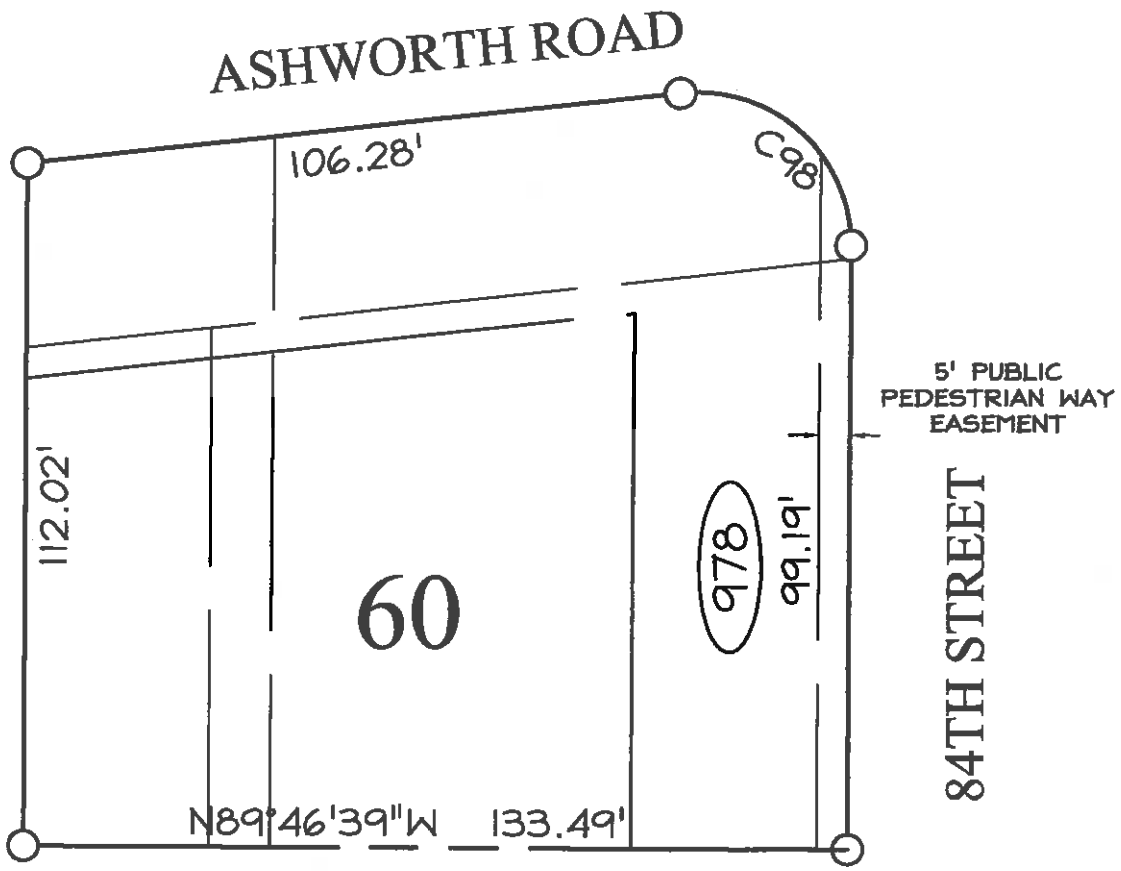
I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Permanent Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, and that this certificate is made pursuant to the authority of said City Council.

Signed this ____ day of _____, 2017.

CITY OF WEST DES MOINES, IOWA

BY: _____
Ryan T. Jacobson, City Clerk

EXHIBIT 'A'
LOT 60
ASPEN VALLEY



COOPER CRAWFORD
& ASSOCIATES, L.L.C.
CIVIL ENGINEERS
475 S. 50th Street, Suite 800, West Des Moines, IA 50265
Phone: (515) 224-1344 Fax: (515) 224-1345

0 15 30
SCALE: 1"=30'
DATE: 6-9-2017

JOB NUMBER
CC
1694