NO CHANGES TO ORDINANCE
ADDITION OF ACCEPT LEGAL DOCUMENTS

CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION

Meeting Date: May 3, 2021

ITEM: Village of Ponderosa, 545, 565, and 570 Market Street and 5905 Stagecoach Drive - Amend the Village of Ponderosa Specific Plan Ordinance to modify setback and maximum height limitations – LENL, LLC – ZCSP-005046-2021

Ordinance: Approval of Third Reading And Adoption of Amendment to Specific Plan Ordinance
Resolution: Approval and Acceptance of Documents

Background: Joel Jackson with Bishop Engineering, on behalf of the applicant and property owner, LENL, LLC, request approval of a Rezoning to amend the Village of Ponderosa Specific Plan (ZCSP), governing development of that ground located at 545, 565, and 570 Market Street and 5905 Stagecoach Drive.

Staff Review & Comment:

- *Financial Impact:* Undetermined
- *Changes to the Originally Intended Development:*
  - *Maximum Building Height*: The original Village of Ponderosa Specific Plan Ordinance called for 3-story mixed use buildings on the subject properties except 570 Market which was thought to be a 1-story structure. A subsequent amendment to the Ordinance was approved in 2015 allowing for stand-alone multi-family development on the properties with a maximum building height of fifty-five feet (55') specified. The applicant designed 5-story buildings for 545 and 565 Market Street and 5905 Stagecoach Drive at a height of sixty-three feet (63') to the top of the parapet as measured from the average grade with the stair tower an additional four feet (4') above the parapet extending to a height of sixty-seven feet (67'). City code provides allowances for stair towers, elevator shafts, equipment penthouses, and other 'non-occupiable' space to exceed the maximum code allowed building height; however, an amendment to the specific plan to increase the maximum allowable building height to sixty-three (63') is necessary. 570 Market Street is a 4-story building which will remain at or below the current specific plan ordinance limit of fifty-five (55') for the primary structure parapet.
  - *Rear and Side Yard Setbacks*: All of the proposed buildings front one street with the balance of the facades bordering common space consisting of either shared parking areas or the central lake and plaza area. The current ordinance requires a thirty-foot (30') separation between buildings. The proposed buildings at 545 and 565 Market Street were site planned to be located less than one foot (1') from the rear property line as the civil engineer preparing the plans thought that they were allowed a zero foot (0') setback. The engineering consultant was working from a version of the Specific Plan Ordinance that they believed was the City approved ordinance which included the following provision, "*Building setbacks for rear and side property lines not adjacent to streets shall be zero feet (0').*" Staff researched the multiple amendments to the specific plan ordinance and found that this provision was never approved by the City Council, was not adopted or codified and therefore did not apply. Although the separation requirement ensures building separation, application of the Building Code is based on the building setback from a defined property line. When a building is located less than ten feet (10') to a property line, the ability to have openings in the building are restricted and certain types of enhanced construction is required. To allow the buildings at the not quite one foot (1') setback, a ten foot (10') no build easement will be located along the opposite (common area) side of the

property line(s) to meet building and fire code requirements for building separation. The building setback language that was believed to be in the currently adopted ordinance will be added for setback clarity purposes.

- *Exhibit Modifications*: The following updates to a few of the exhibits within the Village of Ponderosa Specific Plan Ordinance are proposed with this amendment:
  - The maximum square footages allowed for Buildings "F", "G", "H", and "I" in the table of Exhibit 2A have been increased. The current maximum square footage of living area allowed for each of these buildings is 40,000 square feet. Buildings "F" and "G" (545 & 565 Market St) are now proposed to be 65,747 square feet each, Building "H" (570 Market St) at 38,928 square feet, and Building "I" (5905 Stagecoach Dr) at 46,300 square feet.
  - Parking counts and distribution have been updated in Exhibit 17B because of an increase in the bedroom counts for the apartment units.
  - The images and text of Figure 25 of the Architectural Pattern Book within the Village of Ponderosa Specific Plan will be updated with the architectural drawings for the buildings and indication of the new maximum allowable height.
  - Exhibits 35 A through D in the specific plan, and Figures 5 and 26 in the architectural pattern book will be removed as they represent previously approved designs of the apartments.
- *Allowed Building Materials:* Recent development proposals for the specific plan area are more modern in design and have incorporated composite siding in higher proportions than what is found within the existing development. This material type is not allowed as a primary material in the current specific plan. In general, staff does not have a concern with the use of composite material for cladding. However, to assure that future development continues to maintain a cohesive appearance with existing development, staff is recommending that use of composite material be approved as part of the site plan review rather than a general allowance of the material in the specific plan. The materials language in the architecture section of the specific plan has been modified to reflect the allowance of composite materials as a primary building material acceptable to the City as part of the site plan review.

- *History*: The original Village of Ponderosa Specific Plan Ordinance was adopted on July 31, 2006. In 2015, an amendment to the Village of Ponderosa Specific Plan Ordinance was requested by LENL, LLC to modify the regulations to allow more residential development, including the properties at 545, 565, and 570 Market Street and 5905 Stagecoach Drive. That amendment limited the height of the apartment buildings on those properties to fifty feet (50'). Another amendment to the Ordinance was approved in March of 2017, increasing the maximum height permitted for the buildings in question from fifty feet (50') to fifty-five (55'). The amendments in 2015 and 2017 were requested by the same property owner that is now requesting to increase the height again to sixty-three (63').
- *Traffic Analysis Findings:* No traffic study completed for this request.
- *Condition(s) of Approval:*
  - Staff is proposing a condition of approval that allows the applicant to start site work, including the installation of private utilities and footing and foundations based on a City approved site plan, after City Council approval of the First Reading of the Ordinance. This will allow the applicant to get started on the proposed apartment buildings before the final adoption of the Ordinance. Starting construction before final adoption of the Ordinance would be done at the owner's own risk.

Outstanding Issues: Staff is requesting an additional condition of approval from that reviewed by the Plan and Zoning Commission requiring the execution of the necessary no-build easements prior to being allowed to proceed with above ground construction.

Plan & Zoning Commission: There was no discussion regarding this request. The Commission voted 5-0 in favor of the amendment with one Commissioner absent and one open Commissioner seat.

City Council: on April 5th the City Council voted 4-1 for approval with Council member Trevillyan voting no.

At the meeting a neighboring business owner asked for clarification on the parking allocation for the development. Staff stated that parking spaces are shared across the development and not designated for any specific tenant. Staff indicated that there has been no double allocation of parking spaces for uses and there is sufficient parking within the Village of Ponderosa development to support this project in addition to the existing uses. There were several questions by the Council members on the 0' setback and building height modifications. Staff noted that the 0' setback was always intended in the Specific Plan; the modification is intended to be a clarification. However, the building height was an "oversight" and will need to be modified to allow the proposed building design. It is the Council's choice to not approve that modification to compensate for the mistake in building height when designing the building.

Since there was one dissenting vote at the 1st Reading, it has been the practice of the City Council that the 2nd and 3rd Readings of the request must be considered at separate City Council meetings. The meeting on April 19th will be consideration of the 2nd Reading only.

At the April 19th meeting, the Council voted 4-1 to approve the 2nd Reading of the Ordinance with Council member Trevillyan voting no.

Staff Update: Since the April 19th City Council meeting, staff has received executed no build easements as requested in condition #2 below. Staff recommends that condition #2 be deleted and the City Council approve and accept the executed no build easements and release them for recording.

Recommendation: Approve the Rezoning request to amend the Village of Ponderosa Specific Plan (ZCSP), subject to the applicant meeting all City Code requirements, and the following conditions of approval:

1. The City Council allowing, upon approval of the First Reading of the Ordinance, the initiation of site work, including the installation of private utilities and footing and foundations based on a City approved site plan and/or installation of public utilities based on a City approved Public Improvement Plan. No above ground construction shall be allowed prior to the official adoption of the Specific Plan Ordinance by the City Council.
2. ~~*(New condition since P&Z consideration)* The property owner executing a no-build easement for the buildings at 545 and 565 Market Street and providing such to the City for recordation prior to any above ground construction. The developer may proceed with private utilities and building footing and foundations while the provision of the easement requirement is fulfilled.~~

Lead Staff Member: **Brian Portz** BP

Approval Meeting Dates:

Plan and Zoning Commission	March 22, 2021
City Council: First Reading	April 5, 2021
City Council: Second Reading	April 19, 2021
City Council: Third Reading	May 3, 2021

Staff Report Reviews:

Plan & Zoning Commission	☒ Development Coordinator (or) ☒ Director	☒ Legal Department
City Council	☒ Director ☐ Appropriations/Finance	☒ Legal Department ☐ Agenda Acceptance

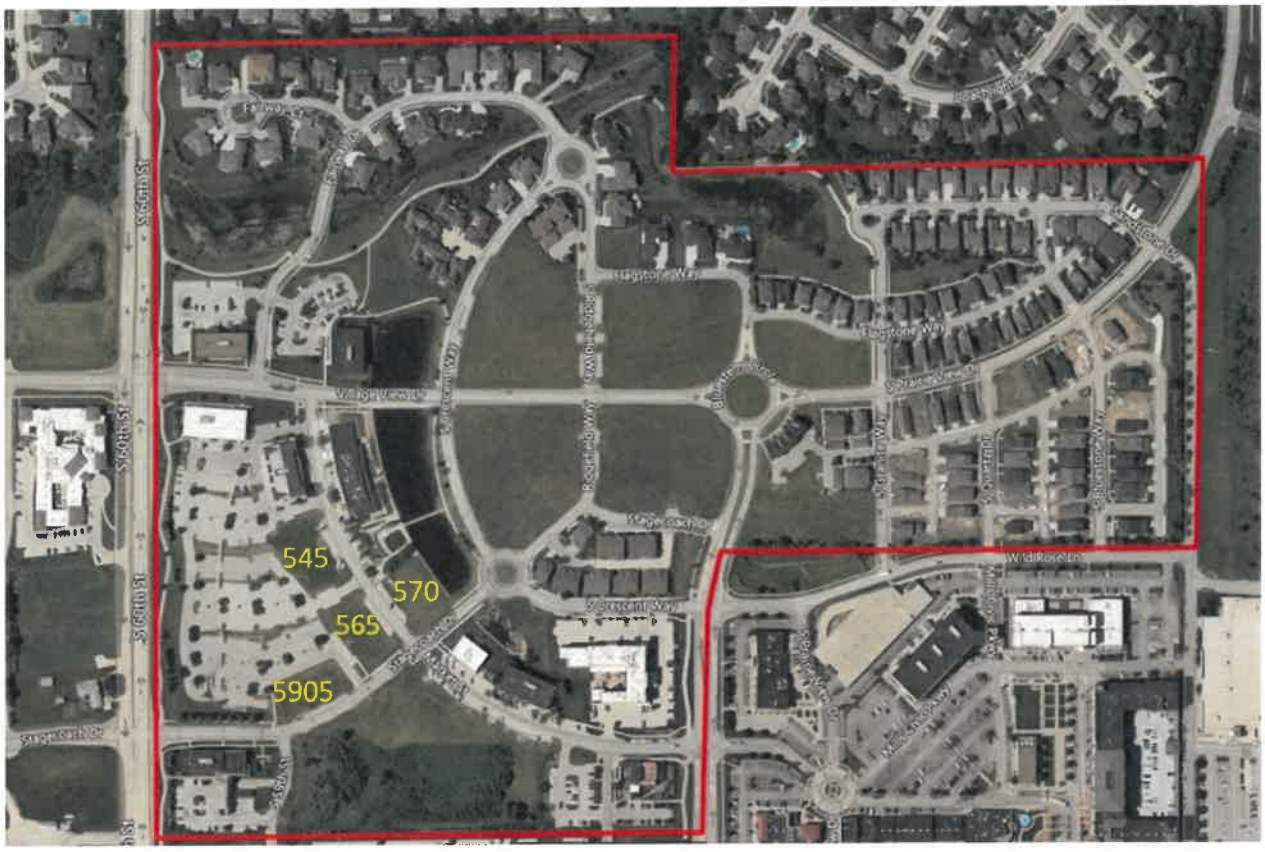
Publications (if applicable)

Published In:	Des Moines Register
Date(s) Published	3/16/21
Date(s) of Mailed Notices	3/16/21

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning
Date Reviewed	3/1/21
Recommendation	☒ Yes ☐ No ☐ Split

Specific Plan Location Map



A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-21-014

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, and property owner, LENL, LLC, request approval of a Rezoning to amend the Village of Ponderosa Specific Plan (ZCSP) to clarify setbacks, increase maximum height limitations and update allowable building square footages on property as legally defined in the Specific Plan Ordinance and indicated on the Location Map, both of which are included in the staff report; and

WHEREAS, the rezoning request complies with the applicable provisions of Iowa Code Chapter 414, the Comprehensive Plan and City Code.

NOW, THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends that City Council approve the Rezoning request to amend the Village of Ponderosa Specific Plan (ZCSP-005046-2021), subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on March 22, 2021.

Erica Andersen
Erica Andersen, Chair
Plan and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on March 22, 2021, by the following vote:

AYES: Andersen, Conlin, Costa, Crowley, Hatfield
NAYS:
ABSTENTIONS:
ABSENT: Drake

ATTEST:
Jennifer Canaday
Recording Secretary

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320, West Des Moines, Iowa 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

ORDINANCE

AN ORDINANCE AMENDING ORDINANCES #1701, 1793, 1846, 2093, 2138, & 2208 TO AMEND THE VILLAGE OF PONDEROSA SPECIFIC PLAN ORDINANCE TO MODIFY DEVELOPENT REGULATIONS AND ARCHITECTURAL CONCEPTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1. AMENDMENT: Amend Ordinances #1701, 1793, 1846, 2093, 2138, & 2208 pertaining to the **Village of Ponderosa Specific Plan,** Section 081-19: *Land Use and Bulk Regulations;* Subsection C: *Multi-Family Residential (Areas 1D, 2E, 3C, And 4A)*; Subsection 2: *Building Height*; and Subsection 3: *Building Setbacks*; is hereby amended by deleting the following strike-thru highlighted text and adding the bolded italicized text and re-lettering as needed. Any subsections included in currently adopted ordinance not included below shall remain as is.

C. Multi-Family Residential (Areas 1D, 2E, 3C, and 4A):

2. Building Height: The building height for multi-family residential structures shall be as follows:
   a. Senior/Active Adult multi-family shall not exceed sixty feet (60') in height ***as measured to the top of the parapet and from the average grade***.
   b. Buildings "F", "G"~~, *"H"*,~~ and "I"-***primary building structure (excluding architectural detailing)*** shall not exceed ~~fifty-*five*~~ ***sixty-three*** feet (~~*55*~~ ***63'***) in height***, as measured to the top of the parapet and from the average grade***.
   c. Building "H" primary building structure (excluding architectural detailing) shall not exceed fifty-five feet (55') in height, as measured to the top of the parapet and from the average grade.
   d. Buildings "K" and "L" shall not exceed seventy-two feet (72') in height ***as measured to the top of the parapet and from the average grade***.

3. Building Setbacks:
   a. Unless otherwise specifically stated, setbacks shall be measured from the property line of parcels that abut a public street or back-of-curb of the thru-lanes of the adjoining private street or alley, not from parallel parking areas or drop-off

lanes. Setbacks along boundaries that do not abut a street shall be measured from the lot boundary.

(1) Building setbacks in areas 1D and 4A shall be measured to the foundation of the dwelling structure or covered parking. Unless otherwise specified below, a minimum thirty-foot (30') setback shall be provided from an adjoining street or perimeter lot boundary. The setback requirement along Village View Drive (both sides within Areas 1D and 4A) shall be twenty feet (20'). The setback requirement along Stagecoach Drive, north side only, within Area 2E shall be ten feet (10').

(2) Building setbacks for buildings within Area 2E and 3C which front to Market Street are measured to the main plane of the building excluding canopies and pedestrian arcades. Buildings should be set back a minimum of fifteen feet (15') except for main building entries which may be as close as six feet (6') from the back of curb of Market Street.

(3) Building setbacks for rear and side property lines not adjacent to streets shall be zero feet (0'). No build easements adjacent to each property line may be required to meet applicable building code requirements related to exterior wall and opening protection.

SECTION 2. <u>AMENDMENT</u>: Amend Ordinances #1701, 1793, 1846, 2093, 2138, & 2208 pertaining to the **Village of Ponderosa Specific Plan,** Section 081-18: *Architecture;* Subsection A: *Building Design*; Subsection 2: *Material Quality And Detail*; is hereby amended by adding the bolded italicized text. Any subsections included in currently adopted ordinance not included below shall remain as is.:

2. Material Quality and Detail: All sides to each building are to receive high quality materials and finishes (360 degree architectural treatment). There are no "backs" to a building. Materials should be durable, economically maintained and of a quality that will maintain their appearance over a prolonged time.
   a. Primary building materials should include, but not be limited to, iron spot or reclaimed brick, limestone or cast stone, concrete and architectural metals.
      (1) Composite building materials acceptable to the City, as determined as part of the site plan review process, may be incorporated in the design as a primary building material.
      (2) Architectural metal and composite building materials shall be detailed with finished edges and have concealed fasteners.
   b. The following materials shall not be used for cladding unless specifically approved by the city of West Des Moines:
      (1) Natural wood or wood paneling.
      (2) EIFS or synthetic stucco.
      (3) Concrete masonry units.
      (4) Tilt-up precast concrete systems that are structural in appearance.
      (5) Materials that are intended for interior use.

SECTION 3. <u>AMENDMENT</u>: Amend Ordinances #1701, 1793, 1846, 2093, 2138, & 2208 pertaining to the **Village of Ponderosa Specific Plan,** complete ordinance; is hereby amended by updating parking information in Exhibit 17B, modifying the maximum square footages allowed for Buildings "F," "G," "H," and "I" in the table of Exhibit 2A and removal of Exhibits 35 A through D in the Specific Plan and modifying the images and text of Figure 25, removal of Figure 5 and 26 of the Architectural Pattern Book within the Village of Ponderosa Specific Plan.

SECTION 4. REPEALER: All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. SAVINGS CLAUSE: If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 6. VIOLATIONS AND PENALTIES: Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Section 1 of the City Code of the City of West Des Moines, Iowa.

SECTION 7. OTHER REMEDIES: In addition to the provisions set out in Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 8. EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the _____ day of _____, 2021 and approved this _____ day of _____, 2021.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

The foregoing Ordinance No. _____ was adopted by the Council for the City of West Des Moines, Iowa, on _____, 2021, and was published in the Des Moines Register on _____ , 2021.

_____
Ryan T. Jacobson
City Clerk

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320, West Des Moines, Iowa 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 DOCUMENT(S) CONVEYING PROPERTY INTERESTS TO THE CITY OF WEST DES MOINES, IOWA

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve the conveyance of all property interest to the City; and

WHEREAS, two 'No-Build Easements' ("Easements") from LENL, LLC conveying property interests to the City for the property legally described on the attached Easements have been presented to the City Council for approval; and,

WHEREAS, it is in the best interests of the citizens of the City to approve and accept the above-described document(s).

NOW, THEREFORE, the City Council does approve and accept the document(s) described above. Said document(s) shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED on May 3, 2021.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on May 3, 2021, by the indicated vote.

Prepared by: Larry Hyler, PLS Bishop Engineering, Inc 3501 104th St, Urbandale, IA 50322 (515) 276-0467
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

NO BUILD EASEMENT

KNOW TO ALL BY THESE PRESENTS:

1. Grant of Easement(s)

The undersigned, on behalf of **LENL, LLC**, an Iowa limited liability company ("Grantor", owner of the property locally known as, **5905 Stagecoach Drive, 545 and 565 Market Street** forming a part of or adjacent to 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 grant, and convey to the **City of West Des Moines, Iowa**, a municipal Corporation ("City"), a permanent and perpetual "No Build Easement" and right-of-way upon, over, under, through and across the real property legally described as:

Lot 31 and 33, The Village of Ponderosa, an Official Plat,
West Des Moines, Polk County, Iowa

Use and Purpose of Easement(s)

This Easement shall be granted for the purpose of maintaining said property legally described herein as free from buildings in order to maintain a minimum ten foot building separation from buildings on property locally known as 565 Market Street. Nothing herein shall prohibit the placement of parking, drive aisles, pedestrian pathways, storm water detention areas, or landscaping within the easement area, subject to all applicable City regulations. The Easement shall be maintained by the Grantor. Easement Description: SEE EXHIBIT "A" ATTACHED

2. Hold Harmless

The Grantor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and assigns 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 arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

3. **Benefits, Burdens**

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the City and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees.

4. **Jurisdiction and Venue**

The City and the Grantor agree that the District Court in and for 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 shall consent to the jurisdiction of **Polk** County, Iowa.

5. **Lawful Authority**

The Grantor covenants with the City that it holds the above-described legal property by good and marketable title, free and clear of liens, easements, and encumbrances, except any of record, and that the Grantor has a right and lawful authority to make and execute this Easement. Grantor warrants and defends said Easement against the lawful claims of all persons claiming by, through or under Grantor.

6. **Approval of City**

This Easement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement by the City Clerk.

7. **Attorney Fees**

Either party may enforce this Easement by appropriate action, and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

8. **Words and Phrases**

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

9. **Parties**

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

10. **Integration**

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

11. Paragraph Headings

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

Dated this 12th day of April, 2021.

GRANTOR

Jim Bergman, Manager LENL, LLC

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on this 12th day of April, 2021, by **Jim Bergman)** as **Manager** for **LENL,LLC** on behalf of whom this record is executed.

NOTARY PUBLIC

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 No Build Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2021, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, 2021.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

EASEMENT EXHIBIT "A"

NO BUILD EASEMENT

EASEMENT DESCRIPTION:

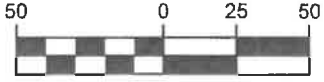
THE NORTHEASTERLY 10.00 FEET OF LOT 33 VILLAGE OF PONDEROSA, AN OFFICIAL PLAT, WEST DES MOINES, POLK COUNTY, IOWA., SOUTHWEST OF AND ADJOINING LOT 30 IN SAID VILLAGE OF PONDEROSA.

THE SOUTHERLY 10.00 FEET OF LOT 31 VILLAGE OF PONDEROSA, AN OFFICIAL PLAT, WEST DES MOINES, POLK COUNTY, IOWA., NORTHWEST OF AND ADJOINING LOT 30 IN SAID VILLAGE OF PONDEROSA.

OWNER:
LENL LLC

PREPARED FOR:
CITY OF WEST DES MOINES

GRAPHIC SCALE



SHEET 1 OF 1

Bishop Engineering
"Planning Your Successful Development"
3501 104th Street
Des Moines, Iowa 50322-3825
Phone: (515)276-0467 Fax: (515)276-0217
Civil Engineering & Land Surveying
Established 1959

565 MARKET STREET
NO BUILD EASEMENT

EASEMENT EXHIBIT

REFERENCE NUMBER:

DRAWN BY:

PROJECT NUMBER:
200233

Prepared by: Larry Hyler, PLS, Bishop Engineering, Inc. 3501 104th St, Urbandale, IA 50322 (515) 276-0467
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

NO BUILD EASEMENT

KNOW TO ALL BY THESE PRESENTS:

1. **Grant of Easement(s)**

The undersigned, on behalf of **THE VILLAGE OF PONDEROSA COMMERCIAL OWNERS ASSOCIATION**, INC, **an Iowa Nonprofit Corporation**, ("Grantor", owner of the property locally known as, **LOT 32 VILLAGE OF PONDEROSA** forming a part of or adjacent to 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 grant, and convey to the **City of West Des Moines, Iowa**, a municipal Corporation ("City"), a permanent and perpetual "No Build Easement" and right-of-way upon, over, under, through and across the real property legally described as:

Lot 32, The Village of Ponderosa, an Official Plat,
West Des Moines, Polk County, Iowa

Use and Purpose of Easement(s)

This Easement shall be granted for the purpose of maintaining said property legally described herein as free from buildings in order to maintain a minimum ten foot building separation from buildings on property located to the East and Southeast known as Lot 30 and Lot 31, The Village of Ponderosa. Nothing herein shall prohibit the placement of parking, drive aisles, pedestrian pathways, storm water detention areas, or landscaping within the easement area, subject to all applicable City regulations. The Easement shall be maintained by the Grantor.

Easement Description: SEE EXHIBIT "A" ATTACHED

2. **Hold Harmless**

The Grantor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and assigns 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 arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

3. Benefits, Burdens

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the City and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees.

4. Jurisdiction and Venue

The City and the Grantor agree that the District Court in and for 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 shall consent to the jurisdiction of **Polk** County, Iowa.

5. Lawful Authority

The Grantor covenants with the City that it holds the above-described legal property by good and marketable title, free and clear of liens, easements, and encumbrances, except any of record, and that the Grantor has a right and lawful authority to make and execute this Easement. Grantor warrants and defends said Easement against the lawful claims of all persons claiming by, through or under Grantor.

6. Approval of City

This Easement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement by the City Clerk.

7. Attorney Fees

Either party may enforce this Easement by appropriate action, and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

8. Words and Phrases

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

9. Parties

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

10. Integration

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

11. Paragraph Headings

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

Dated this 12th day of April, 2021.

GRANTOR

Jim Bergman, Manager of LENL, LLC
Declarant of The Village of Ponderosa
Commercial Owners Association, Inc

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on this 12 day of April, 2021, by **Lim Bergman, Manager of LENL, LLC** as **Declarant of the Village of Ponderosa Commercial Owners Association, Inc., an Iowa Nonprofit Corporation** on behalf of whom this record is executed.

NOTARY PUBLIC

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 No Build Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2021, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, 2021.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

NOTARIAL SEAL IOWA

Jill Ann Pinegar
Commission No. 823687
My Commission Expires
02-10-2023

EASEMENT EXHIBIT

NO BUILD EASEMENT

EASEMENT DESCRIPTION:

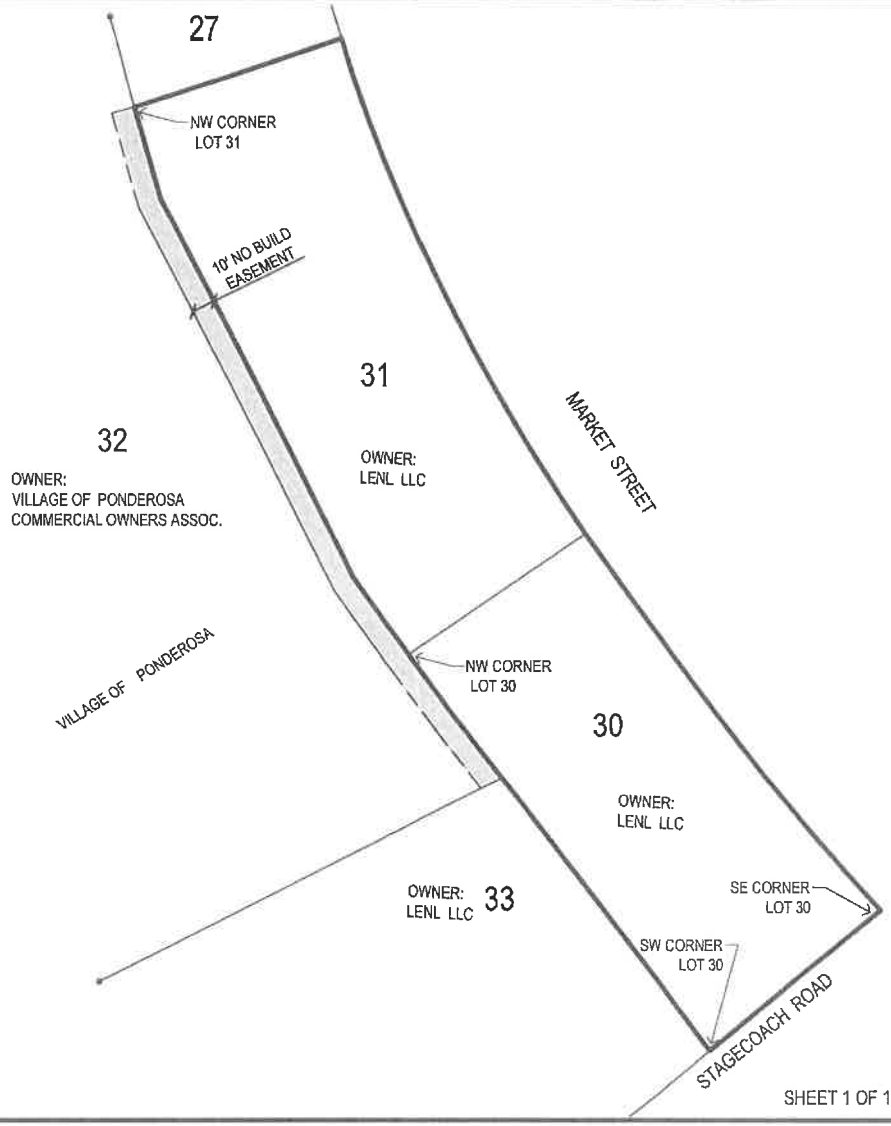
THE NORTHEASTERLY 10.00 FEET OF LOT 32 VILLAGE OF PONDEROSA, AN OFFICIAL PLAT, WEST DES MOINES, POLK COUNTY, IOWA., SOUTHWEST OF AND ADJOINING LOTS 30 AND 31 IN SAID VILLAGE OF PONDEROSA.

OWNER:
VILLAGE OF PONDEROSA
COMMERCIAL OWNERS ASSOC.

PREPARED FOR:
CITY OF WEST DES MOINES

GRAPHIC SCALE

60 0 30 60



SHEET 1 OF 1

Bishop Engineering
"Planning Your Successful Development"
3501 104th Street
Des Moines, Iowa 50322-3825
Phone: (515)276-0467 Fax: (515)276-0217
Civil Engineering & Land Surveying Established 1959

565 MARKET STREET
NO BUILD EASEMENT

EASEMENT EXHIBIT

REFERENCE NUMBER:

DRAWN BY:

PROJECT NUMBER:
200233