



AGENDA ITEM: J1BB

**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: September 7, 2021

AGENDA ITEM: Consideration of approval of a resolution to approve Partial Assignment of Obligations under Supplemental Developer's Agreement [Temple Holdings, L.P. and Courtyards at Park Side LLC]

FORMAT: Resolution

SYNOPSIS INCLUDING PRO & CON: The City of Waukeee and Temple Holdings LP entered into a Developer's Agreement and a Supplemental Developer's Agreement setting forth the requirements and obligations each party is responsible for completing of the NW Douglas Pkwy project from NW 10th St to NW 2nd St. The Courtyards at Park Side has purchased a portion of the Temple Holdings LP property and with the purchase have agreed to accept a portion of Temple's obligations arising under the Supplemental Developer's Agreement. Specifically, Courtyards will be responsible for one-half the obligation to reimburse the City for undertaking the Temple improvements for NW Douglas Pkwy, as described in the Developer's Agreement and the Supplemental Developer's Agreement.

FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS: Temple Holdings L.P. and Courtyards at Park Side LLC are each to reimburse the City of Waukeee \$315,363.70.

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT:

RECOMMENDATION: Staff recommends approval of the resolution.

ATTACHMENTS: I. Resolution
II. Partial Assignment of Obligations under Supplemental Developer's Agreement

PREPARED BY: Beth Richardson

REVIEWED BY: Rudy Koester **RK**

PUBLIC NOTICE INFORMATION –

NAME OF PUBLICATION:

DATE OF PUBLICATION:

THE CITY OF WAUKEE, IOWA

RESOLUTION 2021-

APPROVING PARTIAL ASSIGNMENT OF OBLIGATIONS UNDER SUPPLEMENTAL DEVELOPER’S AGREEMENT [TEMPLE HOLDINGS, LP; COURTYARDS AT PARK SIDE, LLC]

IN THE NAME AND BY THE AUTHORITY OF THE CITY OF WAUKEE, IOWA

WHEREAS, the City of Waukee, Dallas County, State of Iowa, is a duly organized Municipal Organization; AND,

WHEREAS, on May 20, 2019, the Waukee City Council approved a Developer’s Agreement, Warranty Deed and Easements with Temple Holdings, LP, related to the construction of the NW Douglas Parkway Extension Project (Resolution #19-187); AND,

WHEREAS, on September 21, 2020, the Waukee City Council approved a Supplemental Developer’s Agreement with Temple Holdings, LP, in order to provide for the mechanisms and procedures to facilitate the completion and repayment of Temple Holdings, LP, obligations of the original agreement through the undertaking of certain work as part of the City’s project (Resolution #2020-354); AND,

WHEREAS, Courtyards at Park Side, LLC, has purchased a portion of the Temple Holdings, LP, property and have agreed to accept a portion of the obligations arising under the Supplemental Developer’s Agreement.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Waukee, Iowa, that the Partial Assignment of Obligations Under Supplemental Developer’s Agreement between the City of Waukee; Temple Holdings, LP; and Courtyards at Park Side, LLC is hereby approved.

Passed by the City Council of the City of Waukee, Iowa, and approved this the 7th day of September, 2021.

Courtney Clarke, Mayor

Attest:

Rebecca D. Schuett, City Clerk

RESULTS OF VOTE:	AYE	NAY	ABSENT	ABSTAIN
Anna Bergman Pierce				
R. Charles Bottenberg				
Chris Crone				
Larry R. Lyon				
Ben Sinclair				

Prepared by: B. McMurray, 2400 86th Street, Suite 24, Urbandale, Iowa 50322 (515) 276-3456
Return to: City Clerk, City of Waukee. 230 W. Hickman Road, Waukee, Iowa 50263 (515) 987-4522

**PARTIAL ASSIGNMENT OF OBLIGATIONS UNDER SUPPLEMENTAL DEVELOPER'S
AGREEMENT**

This **Partial Assignment Of Obligations Under Supplemental Developer's Agreement** (hereinafter referred to as "Assignment"), entered into between the City of Waukee, an Iowa municipal corporation in the State of Iowa (hereinafter referred to as "City"), TEMPLE HOLDINGS, L.P., (hereinafter referred to as "Temple") and COURTYARDS AT PARK SIDE LLC (hereinafter referred to as "Courtyards") (may also be collectively referred to as "Parties")

WHEREAS, the City and Temple entered into a Developer's Agreement setting forth requirements applicable to the Property described in Exhibit A attached hereto (hereinafter referred to as the "Property"), recorded in the Dallas County Recorder's office on June 3, 2019 at Book 2019, page 8511 (hereinafter referred to as "Agreement"); and

WHEREAS, the parties entered into a Supplemental Developer's Agreement to provide for the mechanisms and procedures to facilitate the completion of Temple's obligations under paragraph 2 and 3 of the Agreement through the undertaking of the work as part of the City's project, such Supplemental Developer's Agreement recorded in the Dallas County Recorder's office on October 1, 2020 at Book 2020, page 26802 (hereinafter referred to as "Supplemental DA"); and

WHEREAS, Courtyards has purchased a portion of the Property subject to the Agreement and the Supplemental DA shown in green on Exhibit B attached hereto and legally described in Exhibit C attached hereto, and, as owner of a portion of the Property, Courtyards has agreed to accept a portion of Temple's obligations arising under the Supplemental DA, specifically, Courtyards shall be responsible for one-half of the obligation to reimburse the City for undertaking the Temple Improvements, as provided in the Agreement and the Supplemental DA; and

WHEREAS, the City is willing to approve and agree to the assignment of one-half of the obligation arising under the Supplemental DA by Temple to Courtyards provided the obligation continues to be secured through a lien on the property being acquired by Courtyards as set forth below and Courtyards acknowledges the obligation for payment; and

WHEREAS, Temple and Courtyards acknowledge that the City has already let the City Project, and provided the accepted bid to Temple and Courtyards and computed the amount due for that portion of work that constitutes the Temple Improvements as required by the Supplemental DA which amounts to \$630,727.40 plus any change orders approved by the Parties as set forth below that may be incurred associated with the Temple Improvements; and

THEREFORE, in consideration of the mutual promises as more particularly set forth herein, sufficiency of which is hereby acknowledged, the Parties agree to a partial assignment of Temple's obligations under the Supplemental DA as follows:

1. Temple does hereby assign and convey to Courtyards one-half of its obligations to the City. Courtyards does hereby accept the assignment and conveyance of one-half of Temple's obligations under the Supplemental DA. The City agrees to Temple's assignment, and Courtyards's acceptance and assumption, of one-half (1/2) of Temple's reimbursement obligation under the Supplemental DA such that Temple reimburses the City Fifty Percent (50%), and Courtyards reimburses the City the other Fifty Percent (50%), for the costs incurred by the City in undertaking the Temple Improvements as provided in the Supplemental DA.

As of the date of this assignment, the reimbursement amount for the Temple Improvements based upon the bid accepted by the City is \$630,727.40 plus change orders approved by the Parties as set forth below attributable to the Temple Improvements as construction progresses. Consequently, following the execution of this assignment by all parties, Temple and Courtyards each owe the City \$315,363.70 pursuant to the Supplemental DA. As construction of the Temple Improvements continues, a change order may be necessitated which may result in additional amounts being due from Temple and Courtyards. Any such change orders shall be approved by Temple and Courtyards prior to such additional work commencing.

2. Temple and Courtyards reimbursement amount shall be calculated as set forth in the second paragraph of Section 1 the Supplemental DA except that Temple and Courtyards shall each be responsible for Fifty Percent (50%) of the total reimbursement amount.
3. As provided in the Supplemental DA, as invoices are received for the work and are paid by the City, copies of the same shall be submitted by the City to Temple and Courtyards within thirty (30) days of receipt. The City shall also invoice Temple and Courtyards separately for Fifty Percent (50%) of the total cost of their respective share of the Costs of the Improvements as they are incurred, based on the quantities allocated to "Developer" as more particularly set forth in Exhibit 1 of the Supplemental DA. Temple and Courtyards shall remit payment to the City for the amount of their invoice within fourteen (14) days of the date of the invoice by the City. Delinquent payments will accrue interest at the rate of 1.5%.
4. Temple's Fifty Percent (50%) obligation shall constitute a lien on its portion of the Property until it satisfies its obligations to the City for payment hereunder and it is released by the City. Courtyards's Fifty Percent (50%) obligation shall constitute a lien on its portion of the Property until it satisfies its obligations to the City for payment hereunder and it is released by the City.
5. Invoices shall be sent to Temple and Courtyards at the following addresses:

Temple Holdings, L.P.
2400 86th Street, Suite 24
Urbandale, IA 50322

Courtyards at Park Side LLC

Dated: _____, 2021

CITY OF WAUKEE, IOWA

By _____
Courtney Clarke, Mayor

By _____
Rebecca Schuett, City Clerk

(City Seal)

STATE OF IOWA)
) ss.
COUNTY OF DALLAS)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Waukee, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council as contained in Ordinance No. _____ passed by the City Council under Roll Call No. _____ of the City Council on the _____ day of _____, 2021, and that Mayor and City Clerk, as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of the City of Waukee, by them voluntarily executed.

Notary Public in and for the State of Iowa
My Commission expires _____

Dated: _____, 2021

TEMPLE HOLDINGS, L.P.

By: _____

Print Name: _____

Title: _____

STATE OF IOWA)

) ss.

COUNTY OF DALLAS)

On this _____ day of _____, 2021, before me, a Notary Public in and for said county, personally appeared _____, to me personally known, who being by me duly (sworn or affirmed) did say that he is a _____ of said limited partnership, that said instrument was signed on behalf of the said limited partnership; and, that said _____, as such _____, acknowledged the execution of said instrument to be the voluntary act and deed of said limited partnership, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

My Commission expires _____

Dated: _____, 2021

COURTYARDS AT PARK SIDE LLC

By: _____

Print Name: _____

Title: _____

STATE OF IOWA)

) ss.

COUNTY OF DALLAS)

On this _____ day of _____, 2021, before me, a Notary Public in and for said county, personally appeared _____, to me personally known, who being by me duly (sworn or affirmed) did say that he is a _____ of said limited partnership, that said instrument was signed on behalf of the said limited partnership; and, that said _____, as such _____, acknowledged the execution of said instrument to be the voluntary act and deed of said limited partnership, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

My Commission expires _____

EXHIBIT A – Property Legal Description

NW ¼ of the SW ¼; NE ¼ of the SW ¼; and the SE ¼ of the SW ¼ all in Section 21, Township 79 North, Range 26 West of the 5th P.M., Waukee, Dallas County, Iowa

And

The SW ¼ of the SW ¼ of Section 21, Township 79 North, Range 26 West of the 5th P.M., Waukee, Dallas County, Iowa, Except Commencing at the SW corner of Section 21, Township 79 North, Range 26 West of the 5th P.M., Dallas County, Iowa, thence N0°00'00"E along the West line of said SW ¼, a distance of 656.10 feet, to the point of beginning, thence continuing along said West line N0°00'00"E, a distance of 253.00 feet, thence N90°00'00"E, a distance of 428.00 feet, thence S0°00'00"W, a distance of 253.00 feet, thence S90°00'00"W, a distance of 428.00 feet to the point of beginning AND Except Parcels A and B of the survey of the SW ¼ of the SW ¼ of Section 21, Township 79 North, Range 26 West of the 5th P.M., Waukee, Dallas County, Iowa as shown in Book 2009 Page 4735

EXHIBIT B – Courtyards property



EXHIBIT C-COURTYARD LEGAL DESCRIPTION

