



TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

PREPARATION DATE: April 12, 2018
MEETING DATE: April 16, 2018

SUBMITTING DEPARTMENT: Engineering
DEPARTMENT DIRECTOR: Larry Pardee
PRESENTER: Brian Lenz, Town Engineer

SUBJECT: The Clusters Perpetual Easement for Sanitary and Storm Water

STATEMENT/PURPOSE

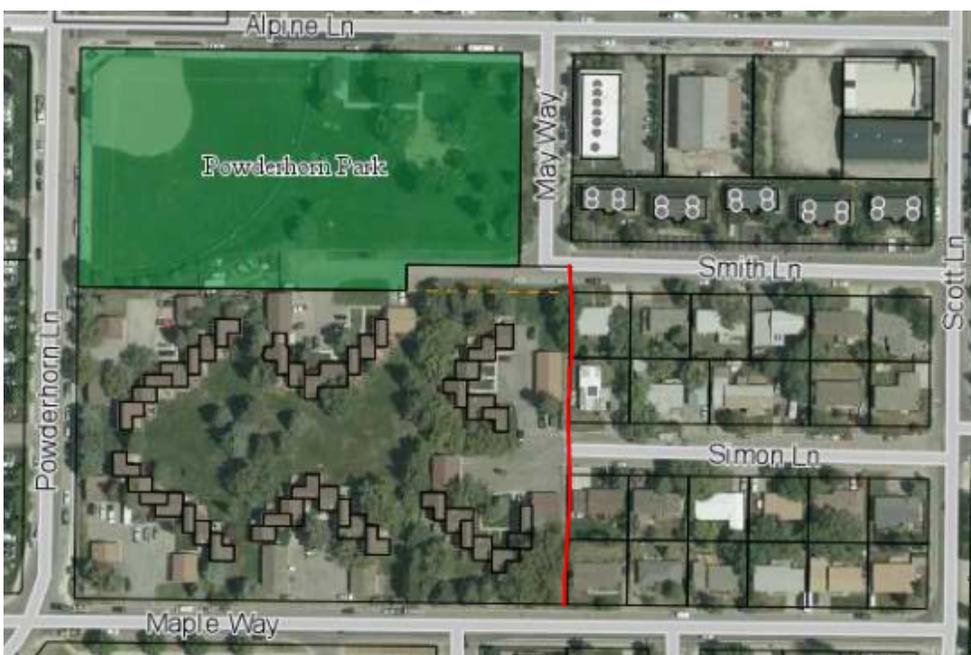
For the Town Council to consider and approve of the attached Perpetual Sanitary and Storm Water Easement Agreement with the Clusters Home Association, INC. (“the Clusters”) necessary to install the new sanitary and storm water mains along their easterly boundary.

BACKGROUND/ALTERNATIVES

The existing clay pipe sanitary sewer that is being replaced is located on the properties to the west of the Clusters in an existing 10-foot wide easement. This sewer has deteriorated and no longer functions well. It is also located approximately five feet from the homes that have been built on the lots. The proposed new sewer is aligned along the property line to provide for better access in the future as well as allow for the existing sewer to remain in service during the construction.

The existing storm water system in this area is a concrete channel located on the Cluster’s property. The history of this channel is no longer clear, but it has a flat grade, has deteriorated in areas, collects sediment and vegetation, and is somewhat of a blight on the area. The proposed storm sewer would allow for the storm water collected from May Way, Smith, and Simon lanes to drain underground. This easement would formalize ownership and maintenance of this infrastructure.

The Clusters HOA president and lawyer have reviewed the document and compensation and were satisfied sufficiently to forward to the entire board for approval. At this time, they have not signed the agreement.



GIS image of the area showing the proposed easement in red.

ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

The Mission of the Town of Jackson is to provide municipal services necessary to support the residential, business, environmental, and historical interests that define our community and support economic development.

ATTACHMENTS

1. Perpetual Sanitary and Storm Water Easement Agreement between the Town and the Clusters with Exhibit A (7 pages Total).

FISCAL IMPACT

The cost of the work contemplated by the attached easements is included in the overall budget for the Smith Simon Lane Sewer replacement project. Compensation for the easement was not included because it was not clear that the easement did not exist. The existing offer to the Clusters follows the Town's policy for perpetual non-exclusive utility easements, 10% of the land market value as listed by the County Assessor, an amount of \$26.10. Additionally, we will be removing the concrete channel, installing a storm sewer, re-grading the area, installing a new fence along the east of the property line, and removing some large trees that interfere with the proposed construction or may be compromised by the construction.

STAFF IMPACT

Staff impact includes staff time negotiating the easement and time allotted to managing the construction of the sewers.

LEGAL REVIEW

Legal has reviewed the easement documents and sent them to the Clusters for approval and signature.

RECOMMENDATION

Staff recommends approval of the attached easement agreements between the Town and the Clusters.

SUGGESTED MOTION

I move to approve the attached Perpetual Sanitary and Storm Water Sewer Easement between the Town and the Clusters and authorize the Mayor to execute the Easement subject to minor changes deemed necessary by staff.

SANITARY AND STORM WATER SEWER EASEMENT

This **PERPETUAL SANITARY AND STORM WATER SEWER EASEMENT** (this "Agreement") is made and entered into by and between the **CLUSTERS HOME ASSOCIATES, INC.** of P.O. Box 2007, Jackson, WY 83001 (hereinafter referred to as "Grantor") and TOWN OF JACKSON, a Wyoming municipal corporation of P.O. Box 1687, Jackson, Wyoming, 83001 (hereinafter referred to as "Grantee").

RECITALS

WHEREAS, Grantor is the owner of the property that is PT NE1/4SE1/4, SEC 32, Township 41, Range 116 West, 6th P.M. (Common Area), Town of Jackson, Teton County, Wyoming, generally known as the Clusters Common Area (hereinafter referred to as the "Property"); and,

WHEREAS, Grantee intends to construct, own, operate, and maintain sewer main facilities located underneath portions of the Property and certain properties adjacent thereto ("Town's Sanitary Sewer Mains"), and intends to connect all properties along the Property to the Town's System; and,

WHEREAS, there is an existing concrete drainage channel on the surface to convey storm water from the north to the south to a storm water sewer inlet at Maple Way; and,

WHEREAS, Grantee intends to demolish and remove the existing concrete drainage channel, and then construct, own, operate, and maintain a new storm water sewer located underneath portions of the Property and certain properties adjacent thereto (the "Town's Storm Water Sewer Mains"); and,

WHEREAS, Grantor desires to declare and establish a perpetual non-exclusive easement to and for the benefit of Grantee in, under, over, through, across and on that portion of the Property described on **Exhibit "A"** (the "Easement Area"), generally described as the easterly ten feet (10.00') of Clusters One and Clusters Two, according to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS AND NO/100 (\$10.00), and other good and valuable consideration, in hand paid, receipt and sufficiency of which is hereby acknowledged and confessed, Grantor and Grantee do hereby agree as follows:

1. **Grant of Perpetual Non-Exclusive Perpetual Easement.** Grantor hereby declares and establishes for the benefit of Grantee and the public, a perpetual non-exclusive easement in, on, over, across, under and through the Easement Area for the purpose of accessing, entering, laying out, constructing, inspecting, operating, maintaining, altering, repairing, and/or replacing the Town's Sanitary Sewer Mains and the Town's Storm Water Sewer Mains and other related activities within the Easement Area, including but not limited to the following to the extent reasonably necessary for the exercise of the easement rights conveyed herein: staging materials, supplies and equipment for the removal and replacement of the Town's Sanitary Sewer Mains and Town's Storm Water Sewer Mains, manholes, cleanouts and appurtenances thereto, together with the right to remove the existing concrete channel, trees, bushes, undergrowth, and other obstructions interfering with the installation, construction, and maintenance of the Town's Sanitary Sewer Mains and the Town's Storm Water Sewer Mains (hereinafter referred to as the "Easement").

2. **Improvement and Maintenance; Repair of Surface.** Grantee shall give Grantor at least fourteen (14) days advance written notice of its intent to exercise its right under this Easement for planned construction, repair, maintenance, etc., and shall use reasonable efforts to notify Grantor of its intent to exercise its right under this Easement for unplanned repairs and maintenance when such prior notice is feasible. Grantee shall be required to and shall, prior to final completion repair,

replace, or rebuild any items damaged on account of any work within the Easement Area, including but not limited to damaged asphalt, fencing, and landscaping, excluding trees or expensive landscaping put in place subsequent to this Easement and to restore the property to an equivalent or better condition to which it was found immediately prior to the commencement of any work done by Grantee or Grantee's agents or contractors within the Easement Area subject to the language set forth in paragraph 3 herein. Grantee shall perform such work in a workmanlike manner and consistent with Town construction standards. The Grantor shall have the opportunity to review and approve all work to restore the Easement Area. Grantor shall, however, be responsible for removing any moveable objects within the Easement Area prior to work by Grantee, and pursuant to paragraph 3 below. Grantee is not responsible for repairing, replacing or rebuilding any moveable objects created by Grantor within the Easement, but must use reasonable efforts to avoid damaging movable objects should Grantee be required to move the same from the Easement Area.

3. **Reservation of Grantor.** The Grantor reserves unto itself, its guests, invitees, legal representatives, heirs, successors and assigns, the right to use the Easement Area subject to this Easement for any purpose whatsoever which does not damage or destroy the Town's Sanitary Sewer Mains or the Town's Storm Water Mains, and does not permanently block, encroach or interfere with Grantee's rights, including access to the Easement Area. The Grantor specifically retains the right to place moveable objects upon the Easement Area that do not interfere with the Grantee's rights set forth in this Easement, together with the right to utilize the Easement Area for parking, storage, driveway (excluding heated driveways), or authorized business purposes, with the understanding that the Grantee is not responsible for repairing, replacing or rebuilding any moveable objects or encroachments created by Grantor within the Easement Area so long as Grantee uses reasonable methods to avoid damaging such movable objects or encroachments.

4. **Restrictions.** The grant of the Easement shall be subject to the following restrictions:

- a. Grantee shall use the rights granted above, with due regard to the rights of others and their use thereof, and shall not use the Easement in any way that would impair the rights of Grantor or others to the use of the same; and,
- b. Grantor shall not construct any building, structure, or improvement within the Easement, without the express written approval of Grantee. Grantee shall not unreasonably deny approval of structure foundation extending less than one (1) feet into the Easement and roof overhangs extending less than one (1) feet into the Easement. Notwithstanding, the parties acknowledge that the Cluster 1 garage wall extends into the 10 foot width area by at least twelve (12) inches and that the footings of the Cluster 1 and Cluster 2 garage walls extend slightly further than twelve (12) inches into the easement area. Grantor shall be entitled to maintain the roof, walls, and footings of the garages within the easement area and repair, reconstruct, and replace as needed; and,
- c. Grantee shall replace the chain link fence with equivalent fencing located a six (6) inches west of the east boundary as allowed by the Town of Jackson Land Development Regulations; and,
- d. Grantor shall not construct any landscaping that impairs, interferes with, or obstructs the use of the Easement by Grantee.

5. **Representation by Grantee.** Grantee represents, acknowledges and agrees that the Easement granted herein shall not have the effect of reducing the development potential of the Property, whether by reducing the base site area or by increasing setback requirements from the Property boundary or the Easement boundary.

6. **Declaration.** The Grantor and Grantee hereby declare that the Easement shall inure to the benefit of the Grantee and its legal representatives. Grantor hereby declares that the Property hereto shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the Easement and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Property.

7. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor's fee simple interest in the Easement Area and shall not merge therewith.

8. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.

9. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not substantially prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys' fees (including the costs of in-house counsel) regardless of whether litigation is commenced.

10. **Term.** The within grant is an easement running with the land and shall be perpetual so long as it is used for the above-described purposes. If at any time the Property is no longer used for the Town's Sanitary Sewer Mains and Town's Storm Water Mains, this Easement shall automatically terminate and be of no further force and effect.

11. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Easement.

12. **Easement In Gross.** The Easement granted herein is a commercial easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easement by any other person or entity other than to Grantee's employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.

13. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement or the Property, whether of title, fitness of use, condition, purpose, or of any other nature. Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.

14. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

15. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated, in whole or in part, unless agreed to in writing by the parties, except as otherwise specifically set forth herein; provided, however, that such amendment or termination shall be properly recorded in the Office of the Clerk of Teton County, Wyoming as a condition to its effectiveness.

16. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

17. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.

18. **Indemnity.** Grantee agrees to indemnify, defend and hold harmless Grantor, their beneficiaries, employees, heirs, successors and assigns (the "Grantor Indemnities") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses (including, without limitation, reasonable attorney's fees and litigation costs incurred by Grantor Indemnities in connection therewith) and for any and all loss of life, injury to persons or damage to the Property as a result of work by the Grantee and Grantee's agents and contractors within the Easement Area. All indemnification provided for herein shall not include indemnification for negligence of Grantor Indemnities or for actions of Grantor Indemnities which would otherwise

make the indemnification void pursuant to Wyoming State Statutes, Wyoming law or any other applicable law.

DATED this _____ day of _____, 2018.

GRANTOR: CLUSTERS HOME ASSOCIATES, INC., of Wyoming

By: _____ Print Name: _____

Title: _____

GRANTEE: TOWN OF JACKSON, a Wyoming municipal corporation

By: _____

Pete Muldoon, Mayor

ATTEST:

By: _____
Sandra P. Birdyshaw, Town Clerk

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 2018, before me personally appeared _____ as the _____ of **CLUSTERS HOME ASSOCIATES, INC.**, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed within this instrument and acknowledged to me that he executed the same in his authorized capacity, and that by its signature on this instrument, the entities upon behalf of which the person acted executed this instrument.

WITNESS my hand and official seal.

Notary Public
My commission expires:

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 2018, before me personally appeared **PETE MULDOON** as **MAYOR** of the **TOWN OF JACKSON**, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed within this instrument and acknowledged to me that he executed the same in his authorized capacity, and that by its signature on this instrument, the entities upon behalf of which the person acted executed this instrument.

WITNESS my hand and official seal.

Notary Public
My commission expires:

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 2018, before me personally appeared **SANDRA P. BIRDYSHAW** as Town Clerk of the Town of Jackson, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed within this instrument and acknowledged to me that he executed the same in his authorized capacity, and that by its signature on this instrument, the entities upon behalf of which the person acted executed this instrument.

WITNESS my hand and official seal.

Notary Public
My commission expires

EXHIBIT A
DESCRIPTION FOR A PERPETUAL SANITARY AND STORM WATER
SEWER EASEMENT
FROM THE CLUSTERS HOME ASSOCIATES, INC.
TO THE
TOWN OF JACKSON

A ten foot (10.00') wide sanitary and storm water sewer easement within The Cluster One Addition to the Town of Jackson Plat 198 AND within The Amended Cluster Two Addition to the Town of Jackson Plat 210 more particularly described as follows;

the easterly 10.00 feet of The Cluster One Addition to the Town of Jackson Plat 198;
AND,

the easterly 10.00 feet of The Amended Cluster Two Addition to the Town of Jackson Plat 210.

Said strips of land contain 0.04 acres and 0.04 acres, more or less, and are subject to any easements, rights-of-way, reservations or restrictions of sight and/or of record.