

## **SUBDIVISION AGREEMENT**

THIS SUBDIVISION AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2021, by Round 2 Development, a Minnesota Limited Liability Company (hereinafter referred to collectively as the "Subdivider") and the City of Grand Rapids, a Minnesota municipal corporation (the "City").

### **RECITALS**

- A. Subdivider has submitted a preliminary Plat to subdivide certain real estate located within the corporate limits of the City; said preliminary Plat is entitled Hawkinson Commercial Development. (Exhibit A)
- B. This City has, pursuant to its Subdivision Ordinance (the "Ordinance"), approved on a preliminary basis the Plat of Hawkinson Commercial Development (the "Plat"). (Exhibit B)
- C. The City has determined that, should Subdivider comply with the terms of this Agreement, the language and intent of the Ordinance will be complied with and it would be appropriate for the City to approve a final version of the Plat, which then may be appropriately filed.

### **AGREEMENT**

- 1. **CONSIDERATION.** This is a mutual Agreement, which the parties acknowledge is supported by adequate consideration, and which shall be legally binding upon the parties.
- 2. **PARK LAND DEDICATION.** In lieu of dedication of parkland within the Plat, the Subdivider, as is provided in the Ordinance, will make a cash payment to the City in the amount of \$23,760.00 (Twenty-three thousand seven hundred sixty dollars and 00/100) immediately upon execution of this agreement.
- 3. **REQUIRED IMPROVEMENTS** The Subdivider agrees to construct at the Subdivider's sole cost the following improvements within the Plat, and in conformity with all

applicable standards, ordinances, and with the final construction plans for those improvements upon their review and approval by the City Engineering Department. The Required Improvements will involve the completion of: public sanitary sewer main and water main:

- (a) Utility easement lying east of and adjacent to Lots 1 & 2, Block 1.

4. SCHEDULE FOR REQUIRED IMPROVMENTS. The City and Subdivider agree that the Required Improvements, described in above paragraph, shall be substantially completed on or before November 1, 2022.

The above-described improvements shall be in compliance with all applicable statutes, codes, and ordinances and with the construction standards of the City at the Subdivider's expense.

It shall be the duty of the Subdivider to retain the services of an independent testing agency during the construction phase of the improvements listed above in Paragraphs 3 to conduct material and construction quality testing in accordance with the Schedule of Materials and Testing (Exhibit D). The Subdivider will forward a copy of the testing agencies reports, regarding the results of this testing, to the City.

It shall be the duty of the Subdivider to notify the City of the completion of the Work in writing and to thereby request a final inspection of the Work by employees of the City. A civil engineer, registered in the State of Minnesota and retained by the Subdivider, shall provide written certification to the City that the improvements have been completed in accordance with the approved plans and specifications.

The City, following inspection of the Required Improvements and the determination that the Required Improvements have been satisfactorily completed, shall give notice of the date of actual completion and acceptance to the Subdivider. Notice of deficiencies and of required corrections shall be given to the Subdivider, who shall re-notify the City in writing when corrections have been made and may be inspected.

No Certificate of Occupancy shall be granted to any property nor shall any person occupy any property until:

- (a.) The Required Improvements are substantially completed in accordance with the terms set forth by this Agreement.

5. CONSTRUCTION PLANS. Construction plans and specifications for the required improvements, conforming in all respects with the standards of the City Engineer and the ordinance of the city, shall be prepared at the Subdivider's expense by a professional engineer who is registered in the state, and the plans shall contain his or her seal. Such plans, together with the quantities of construction items, shall be submitted to the City Engineer for his/her approval and for his estimate of the total cost of the required improvements; upon approval they shall become a part of this Agreement (Exhibit C). The original plans approved by the City Engineer plus two prints, and electronic as-builts, shall be furnished to the city to be filed by the City Engineer as a record in the Engineering Department.

6. FINANCIAL GUARANTEE: The Subdivider agrees to furnish the City with a financial guarantee in the form of a cash escrow; an irrevocable letter of credit provided by a Minnesota financial institution or other financial institution reasonably acceptable to the City; or in the form of other financial instruments which provide equivalent assurance to the City and which are approved by the City Director of Finance.

The Subdivider shall furnish the City with a financial guarantee in the amount of \$192,860.25 dollars, which constitutes 110 percent of the City Engineering Department's estimated cost of outstanding improvements as outlined in Paragraph 3 (which estimate is attached as Exhibit C hereto), and such financial guarantee shall continue in full force and effect until the City Council has approved and accepted all of the Work undertaken to be done, and shall thereby release the surety and/or Subdivider from any further liabilities; provided, however, that the City Council shall reduce the amount of the financial guarantee upon partial completion of the Work as certified by the City Administrator in his/her reasonable discretion after consultation with the City Engineering Department and the Subdivider's general contractor.

The financial guarantee shall be conditioned upon the full and faithful performance of all elements of this Agreement, and upon compliance with applicable statutes, codes, and ordinances of the City, and shall further be subject to the following provisions, which shall be deemed to be incorporated in such financial guarantee and made part thereof.

When any instrument such as an irrevocable letter of credit, submitted as a financial guarantee for the Work, contains provision for an expiration date, after which the instrument may not be drawn upon, notwithstanding the status of the Work, it is hereby agreed that the following special conditions shall apply:

The expiration date of all such instruments shall be no earlier than December 31<sup>st</sup>, of the year in which it is issued or the closest business day in the case of weekends and legal holidays.

The Subdivider (or in the case of a Letter of Credit, the bank or other issuer of the Letter of Credit) shall notify the City in writing, by certified mail, at least sixty (60) days prior to the expiration date of the instrument, that (1) the instrument will not be renewed upon expiration; or (2) the instrument will be renewed and extended for at least six months beyond the initial expiration date.

In the case of the intention not to renew an instrument upon expiration, the Subdivider hereby agrees that an appropriate new instrument shall be submitted at least thirty (30) days prior to expiration of the initial instrument, to guarantee the completion of remaining work unless, prior to the expiration date, the City Council has found that all work has been completed and has, therefore, released the Subdivider from the obligation to provide a guarantee. If a new financial instrument is not timely submitted, and the City Council has not so released the Subdivider, the Subdivider shall be in a breach of this Agreement.

In the case of an intention to renew the instrument, the Subdivider hereby agrees that a written notice of extension from the financial institution providing the instrument shall be submitted to the City at least thirty (30) days prior to the expiration date in the initial instrument. The term of any extension shall be approved by the City.

7. **EASEMENT VACATIONS:** The Subdivider desires that certain Public Infrastructure easements held by the City within the Plat area be vacated or relinquished. With dedicated right of way and utility easements within the Plat accommodating all of the current and planned infrastructure needs, the City agrees that the following easements can be vacated or relinquished:

(a) An easement for Public Infrastructure, granted by Hawkinson Construction, Incorporated and Round Properties, LLC. to the City of Grand Rapids. Said easements being recorded under Document No. T000050084.

(b) An easement for Public Infrastructure, granted by Hawkinson Construction, Incorporated and Round Properties, LLC. to the City of Grand Rapids. Said easements being recorded under Document No. A000591364.

(c) An easement for Public Infrastructure, granted by Round Properties, LLC. to the City of Grand Rapids. Said easements being recorded under Document No. A000589281.

The City agrees to vacate the easements listed in this section concurrent with the filing and recording of the Plat through the execution and recording of the attached Quit Claim Deed (Exhibit E).

8. **SURVEY MONUMENTS.** In accordance with Minnesota Statute §§505.02, Subdivision 1, the Subdivider shall set survey monuments of a permanent character in the locations on the boundary of the subdivision, and within it, as required within 1 year of the filing and recording of the Plat.

9. **REMEDIES FOR BREACH.** At any time after the completion date and any extension thereof, if any of the Work is deemed incomplete, or if a letter of credit or surety will expire without renewal prior to completion, the City may proceed in any one or more of the following ways to enforce the undertakings herein set forth, and to collect any and all overhead expenses incurred by the City in connection therewith, including but not limited to engineering, legal, planning, and litigation expenses; but the enumeration of the remedies hereunder shall be in addition to other remedies available to the City.

- (a) Specific Performance. The City may in writing direct the surety or the Subdivider to cause the Work to be undertaken and completed within a specified reasonable time. If the surety and/or the Subdivider fail to cause the Work to be done and completed in a manner and time acceptable to the City, the City may proceed in an action for specific performance to require such work to be undertaken.

- (b) Completion by the City. The City, after 10 days notice to Subdivider, may enter the premises and proceed to have the Work done either by contract, by day labor, or by regular City forces, and neither the Subdivider nor the corporate surety may question the manner of doing such work or the letting of any such contracts for the doing of any such work, or the doing of such work. Upon completion of such work, the surety and/or the Subdivider shall promptly pay the City the full cost thereof as aforesaid.
- (c) Funds on Deposit. In the event that the financial guarantee is in the form of cash, certified check, irrevocable letter of credit, or other arrangement making the financial guarantee immediately accessible to the City, the City may immediately draw on a letter of credit, cash, a certified check, or demand payment by a surety. It may then deposit the financial guarantee in its general account. The City may then proceed to complete the Work, reimburse itself for the cost of completion as defined hereunder, and return the balance to the Subdivider.

10. **AGREEMENT TO PAY ATTORNEY'S FEES AND EXPENSES.** Whenever any default occurs and the City employs attorneys or incur other reasonable expenses in enforcement or performance of the obligations under this agreement, the Subdivider agrees on demand to pay the City the reasonable fees or expenses incurred by the City.

11. **MISCELLANEOUS TERMS.** This Agreement shall also be subject to the following terms and conditions:

- (a) This Agreement shall be interpreted in accordance with the laws of the State of Minnesota.
- (b) The terms of this Agreement shall not be amended, supplemented, or varied, except by written agreement signed by the parties.
- (c) All terms of this Agreement which are binding upon Subdivider shall run with the land and shall be binding upon all heirs, successors, assigns, mortgages, lien holders, trustees, receivers, or any other person or entity which shall succeed to any rights of Subdivider in the Real Estate.
- (d) The Subdivider shall provide the City with copies of the recorded Subdivision Agreement, Plat, & other legal instruments pertaining to the Plat upon their filing with the County Recorder. No building permits will be issued by the City until this written verification has been provided.

This Agreement is made and entered into as of the date and year written above.

SUBDIVIDER

CITY OF GRAND RAPIDS

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: President

Its: Mayor

By: \_\_\_\_\_

Its: City Clerk

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Mark Hawkinson, the President of Round 2 Development, a Minnesota Limited Liability Company, the Subdivider.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF ITASCA )

The foregoing instrument was acknowledged by the City of Grand Rapids before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the City.

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Notary Public

This instrument drafted by:  
City of Grand Rapids  
Community Development Department  
420 N. Pokegama Avenue  
Grand Rapids, MN 55744

EXHIBIT A

Preliminary Plat of Hawkinson Commercial Development



**EXHIBIT B**

**Final Plat of Hawkinson Commercial Development "The Plat"**

## EXHIBIT C

### City Engineering Department's Cost Estimate

<b>ROUND 2 DEVELOPMENT</b>					
<b>HAWKINSON COMMERCIAL DEVELOPMENT</b>					
<b>STATEMENT OF ESTIMATED QUANTITIES</b>					
<b>LINE NO.</b>	<b>DESCRIPTION</b>	<b>UNITS</b>	<b>QUANTITY</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
1	CONSTRUCTION SURVEYING	LUMP SUM	1	\$5,000.00	\$5,000.00
2	MOBILIZATION	LUMP SUM	1	\$7,500.00	\$7,500.00
3	SAWING BITUMINOUS PVMT (FULL DEPTH)	LIN FT	249	\$2.00	\$498.00
4	REMOVE BITUMINOUS PAVEMENT	SQ YD	277	\$4.00	\$1,108.00
5	CRUSHED ROCK	CU YD	189	\$15.00	\$2,835.00
6	2" INSULATION	SQ YD	37.5	\$25.00	\$937.50
7	12" x 4" PVC WYE	EACH	1	\$750.00	\$750.00
8	CONNECT TO EX. SANITARY SEWER	EACH	1	\$3,500.00	\$3,500.00
9	12" PVC PIPE SEWER	LIN FT	222	\$45.00	\$9,990.00
10	8" PVC PIPE SEWER	LIN FT	269	\$35.00	\$9,415.00
11	SANITARY SEWER INSPECTION	LIN FT	491	\$1.50	\$736.50
12	12" GATE VALVE AND BOX	EACH	2	\$4,000.00	\$8,000.00
13	6" GATE VALVE AND BOX	EACH	2	\$1,800.00	\$3,600.00
14	CONNECT TO EXISTING WATER MAIN	EACH	2	\$3,500.00	\$7,000.00
15	HYDRANT	EACH	2	\$5,500.00	\$11,000.00
16	12" WATER MAIN DUCTILE IRON CL 52	LIN FT	670	\$75.00	\$50,250.00
17	6" WATER MAIN DUCTILE IRON CL 52	LIN FT	78	\$55.00	\$4,290.00
18	HYDRANT RISER	LIN FT	1	\$500.00	\$500.00
19	WATER MAIN FITTINGS	POUND	886	\$10.00	\$8,860.00
20	ADJUST FRAME & RING CASTING	EACH	1	\$500.00	\$500.00
21	CASTING ASSEMBLY	EACH	3	\$850.00	\$2,550.00
22	CONST DRAINAGE STRUC. DESIGN F	EACH	3	\$4,500.00	\$13,500.00
23	CONST DRAINAGE STRUC.DESIGN F	LIN FT	22.96	\$500.00	\$11,480.00
24	CONSTRUCT 12" OUTSIDE DROP	LIN FT	5.37	\$750.00	\$4,027.50
25	TRAFFIC CONTROL	LUMP SUM	1	\$2,500.00	\$2,500.00
26	STABILIZED CONSTRUCTION EXIT	LUMP SUM	1	\$2,500.00	\$2,500.00
27	EROSION CONTROL	LUMP SUM	1	\$2,500.00	\$2,500.00
				Estimated Construction Cost	\$175,327.50
				Contingency (10%)	\$17,532.75
				Estimated Total Cost	\$192,860.25

EXHIBIT D

Schedule for Materials and Testing

<b>Product</b>	<b>Test Type</b>	<b>Approximate Frequency</b>	<b>Remark</b>
Trench Compaction	Compaction	1 per 1000 cy (CV)	Owners Rep shall contact Testing Firm to take sample and perform test
Water main	Pressure	In accordance with AWWA C600	See specifications
Water main	Bacteria	In accordance with AWWA C651	See specifications
Water main	Conductivity	Entire System	See specifications
Sanitary Sewer	Deflection	Entire system, 30 days after install	95% inside diameter
Sanitary Sewer	Air Test	Entire system	See specifications

EXHIBIT E

Quit Claim Deed