

COUNCIL ACTION FORM

SUBJECT: AGREEMENT FOR FUTURE ACCESS EASEMENT AND AGREEMENT FOR PUBLIC IMPROVEMENTS FOR ASPEN BUSINESS PARK SUBDIVISION, THIRD ADDITION

BACKGROUND:

Aspen Business Park Subdivision, Third Addition, Final Plat was approved by City Council at the April 11, 2017 Meeting. A Final Plat submittal for a Major Subdivision requires the inclusion of an Agreement for Public Improvements. In this instance, the applicant was told in error that the Agreement was not needed. The applicant has since submitted the necessary document.

In addition, the developer has submitted an Easement Agreement that will allow for the future extension of Grand Avenue. The proposed easement is located in the southwest corner of Aspen Business Park Subdivision, Third Addition, Lot 2.

Staff has reviewed the Easement Agreement and the Agreement for Public Improvements and is satisfied that they meet the requirements for the access easement for the future extension of Grand Avenue and guarantees that public improvements will be completed, respectively.

A copy of the Easement Agreement and Agreement for Public Improvements are attached to this Council Action Form. If the City Council approves the Agreement, staff will finalize the signatures and facilitate recording of the document.

ALTERNATIVES:

1. The City Council can approve the attached Access Easement and Agreement for Public Improvements between the owner of Aspen Business Park Subdivision, Third Addition, and the City.
2. The City Council can disapprove the attached Access Easement and Agreement for Public Improvements between the owner of Aspen Business Park Subdivision, Third Addition and the City.

MANAGER'S RECOMMENDED ACTION:

This Access Easement will preserve the City's right to facilitate the future extension of Grand Avenue. The Agreement for Public Improvements will ensure that all public improvements are installed to the City's standards with the development of Aspen Business Park Subdivision, Third Addition.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative # 1 as described above.

Attachment A – Easement Agreement

Prepared by: John A. Tillo, Pasley & Singer Law Firm, LLP, 323 Sixth St., P.O. Box 664, Ames, IA 50010
Return to: John A. Tillo, Pasley & Singer Law Firm, LLP, 323 Sixth St., P.O. Box 664, Ames, IA 50010

Easement Agreement

THIS IS AN AGREEMENT made by and between Grantor and Grantee upon the following terms and conditions:

1 DEFINITIONS. When used in this agreement, unless otherwise required by the context:

- 1.1 "Agreement" means this instrument as signed by the parties thereto.
- 1.2 "Easement Area" means the tract of land described as follows: the area of land described as the "Right of Way Reservation" on "Exhibit A". The "Easement Area" may otherwise be described as:

That part of Lot 2, ASPEN BUSINESS PARK SUBDIVISION, THIRD ADDITION, Ames, Story County, Iowa, lying west of a line drawn from the Northwest corner thereof to a point on the South line of said Lot 2, which is 40.00 feet East of the Southwest Corner thereof.

- 1.3 "Exhibit A" is the Final Plat of the "Aspen Business Park Subdivision, Third Addition, Ames, Story County, Iowa," a copy of which is attached hereto.
- 1.4 "Grantee" means The City of Ames of Story County, Iowa.
- 1.5 "Grantor" means Tailwind 1854 Madison, LLC, a Minnesota limited liability company.
- 2 CIRCUMSTANCES.** Grantor is the owner of certain real estate depicted as "Lot 2" on Exhibit A, by virtue of legal title, that it is lawfully seized and possessed of said real estate. Grantor desires to grant to the City of Ames of Story County, Iowa the right to use the Easement Area for a public street and public right-of-way. Grantee contemplates constructing that public street currently known as South Grand Avenue in the future, which necessitated this grant of rights to the City of Ames of Story County, Iowa.
- 3 EASEMENT CREATED.** Within the Easement Area, the Grantee shall have and hold the perpetual right to construct, reconstruct, operate, use, maintain and repair a street and public right-of-way.
- 4 OBLIGATIONS OF GRANTOR.** Grantor shall not:
 - 4.1 erect any structures over or within the Easement Area without obtaining the prior written approval of the City Engineer of the City of Ames, Iowa, or
 - 4.2 erect or cause to be placed on the Easement Area any material devices, thing or matter which impedes or obstructs free and unimpeded access by the public across the Easement Area without obtaining the prior written approval of the City Engineer of the City of Ames, Iowa.

JAT # 2017060712410

Pasley & Singer Law Firm, L.L.P.
Ames, Iowa

- 5 **CONSTRUCTION ENCROACHMENT.** During the initial construction of the improvements that Grantee is authorized to make within the Easement Area under this Agreement, Grantee shall have the right, as reasonably necessary for construction purposes, to temporarily encroach upon land of Grantor's adjacent to and extending a distance of two (2') feet from the Easement Area.
- 6 **RESTORATION.** Immediately following construction, reconstruction or repair work by the Grantee within the Easement Area, weather and season permitting, the ground disturbed within the Easement Area and Encroachment Area by such work shall be restored to its natural grade and previous condition by the Grantee or, if reasonably required by said construction, reconstruction or repair, an improved grade and condition compatible therewith. If the ground disturbed within the Easement Area and Encroachment Area has existing grass cover or is used for gardening or the growing of farm crops, all tillable topsoil removed from such ground area shall be separately stockpiled and then restored to its previous surface location upon completion of the construction, reconstruction or repair work.
- 7 **SEEDING.** Immediately following construction, reconstruction or repair work by Grantee within the Easement Area, weather and season permitting, ground area with previously existing grass cover that is disturbed by such work shall be planted with grass seed in accordance with customary methods of soil preparation and planting by Grantee.
- 8 **TITLE WARRANTY.** Grantor warrants to Grantee that Grantor holds the Easement Area by title in fee simple; that Grantor has good and lawful authority to grant the easement rights herein provided for; and that any prior liens or encumbrances on the Easement Area will either be released forthwith or will be subordinated to the easement rights granted herein by a duly executed and recorded subordination agreement.
- 9 **NOTICE.** Unless otherwise required by law, any notice or demand required or permitted by the terms of this agreement shall be sufficient and deemed complete when expressed in writing and either (a) personally delivered to the person entitled thereto, or (b) deposited at any office of the United States Postal Service in the form of certified mail addressed to the last known mailing address of the person entitled thereto, or (c) served on the person entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure.
- 10 **AGREEMENT.** This easement is given pursuant to an obligation to reserve street right-of-way and a no build zone under a Contract Rezoning Agreement filed with the Story County Recorder, January 11, 2016, as Instrument No. 16-00239.
- 11 **SUCCESSORS BOUND.** This agreement shall be binding upon and inure to the benefit of the respective successors and assigns of all parties executing this Agreement.
- 12 **INTERPRETATION.** Words and phrases used in this agreement shall be construed as in the single or plural number, and as masculine, feminine or neuter gender, according to the context. This agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this agreement. This agreement may be

executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

In Witness Whereof the Grantor executes this instrument on 5/4, 2017.

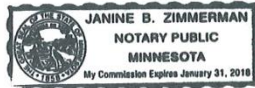
[Signature]
Tailwind 1854 Madison, LLC
By: Michael Sather, Managing Member
Address: _____

STATE OF MN, COUNTY OF Hennepin, ss:

This instrument was acknowledged before me this 4 day of May, 2017, by Michael Sather, Managing Member of Tailwind 1854 Madison, LLC.

(SEAL)

[Signature]
Notary Public in and for the State of MN



In Witness Whereof the Grantee executes this instrument on _____, 2017.

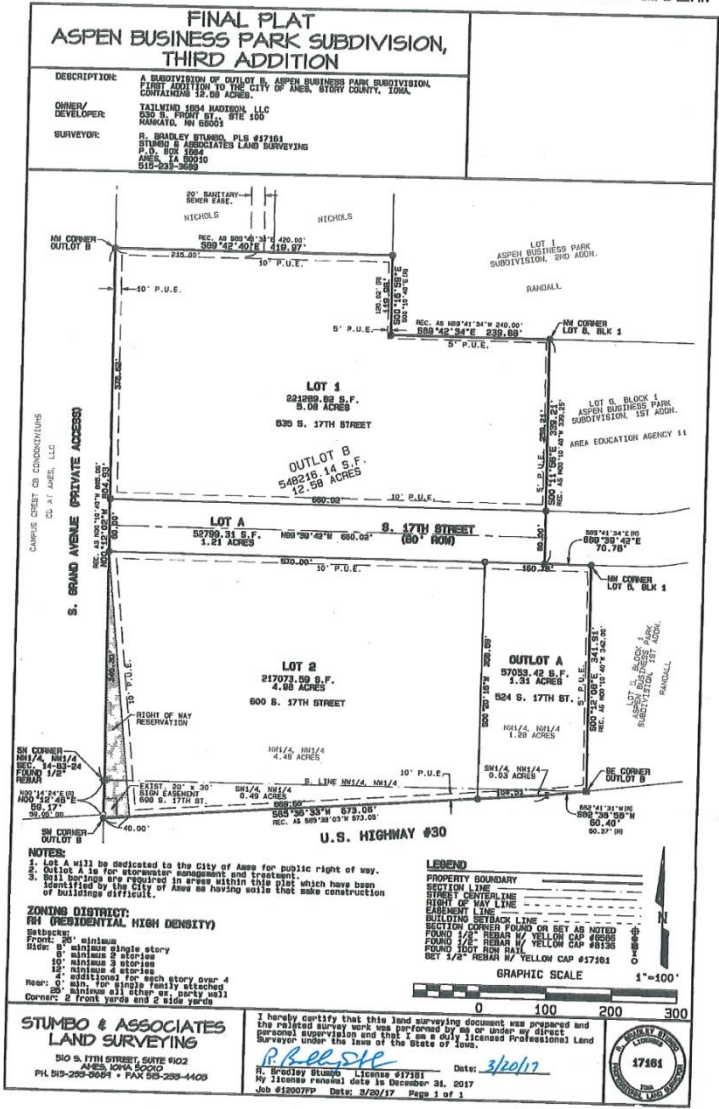
CITY OF AMES
By: Director of Public Works

STATE OF IOWA, COUNTY OF STORY, SS:

This instrument was acknowledged before me this _____ day of April, 2017, by _____, as Director of Public Works for the City of Ames, Iowa.

(SEAL)

Notary Public in and for the State of Iowa



Attachment B – Agreement for Public Improvements

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER
Prepared by: John A. Tillo, Pasley & Singer Law Firm, LLP, 323 Sixth St., P.O. Box 664, Ames, IA 50010; 515-232-4732
Return to: City Clerk, City of Ames, 515 Clark Ave., Ames, IA 50010

AGREEMENT FOR PUBLIC IMPROVEMENTS

The parties to this Agreement are Tailwind 1854 Madison, LLC, a Minnesota limited liability company, hereinafter referred to as "Owner", and the CITY OF AMES, IOWA, hereinafter referred to as "City".

WHEREAS, the City approved a minor subdivision final plat pursuant to Section 23.303, Ames Municipal Code which is now known as Aspen Business Park Subdivision, Third Addition, Ames, Story County, Iowa (the "Real Estate"); and,

WHEREAS, the Owner is the sole, lawful owner in fee simple of the Real Estate; and,

WHEREAS, the Owner consents to the City's request to further clarify the public improvements to be installed and constructed by Owner on said Real Estate; and,

WHEREAS, the Owner agrees to construct certain improvements and utilities within the Real Estate, to wit: See "Itemization" on page 2, by not later than April 10, 2018 and, to pay reasonable engineering and inspection fees therefore, all as part of the platting procedure of the City; and


WHEREAS, the Owner has deposited with the City an irrevocable standby letter of credit dated April 10, 2017 in the amount of \$595,633.94 conditioned upon the completion of the said improvements and utilities, by April 10, 2018, as required by the City for said Subdivision, in accordance with plans and specifications on file with the City's engineers and by this reference made a part of this agreement.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed that the City reserves the right to construct said improvements and utilities in the event Owner fails to do so as herein agreed, and to cover the costs thereof with the irrevocable standby letter of credit.

IT IS FURTHER AGREED that upon satisfactory completion of the said improvements and utilities, including the paying of reasonable engineering and inspection fees therefore, the letter of credit shall be released and returned to Owner.

DATED this 4th day of May, 2017.

In Witness Whereof the **Owner** executes this instrument on 5/4/17,
2017.

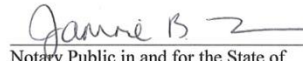


Tailwind 1854 Madison, LLC
By: Micael Sather, Managing Member

STATE OF MN, COUNTY OF Hennepin, SS:

This instrument was acknowledged before me this 4 day of May, 2017, by
Michael Sather, Managing Member of Tailwind 1854 Madison, LLC.

(SEAL)



Notary Public in and for the State of MN



In Witness Whereof the City executes this instrument on _____, 2017.

John Joiner,
Director of Public Works
City of Ames, Iowa

STATE OF Iowa, COUNTY OF Story, SS:

This instrument was acknowledged before me this _____ day of May, 2017, by
John Joiner, Director, City of Ames Public Works.

(SEAL)

Notary Public in and for the State of Iowa

Itemized List

1. Public Streets – Lot A, S. 17th Street
2. Sanitary Sewer Line
3. Storm Sewer Line
4. Water Main
5. Street Lighting
6. Street Trees
7. Sidewalks
8. COESCO