Prepared by & Return to: Faegre Drinker Biddle & Reath LLP, Attn: Lica Tomizuka, 2200 Wells Fargo Center, 90 South 7th St., Minneapolis, MN 55402-3901 (612) 766-7000

STORM WATER EASEMENT AGREEMENT

THIS STORM WATER EASEMENT AGREEMENT (the "**Agreement**"), is entered into as of _____, 2021 by **THE CITY OF COUNCIL BLUFFS, IOWA**, a municipal corporation (the "**City**"), and **OPUS DEVELOPMENT COMPANY, L.L.C.**, a Delaware limited liability company ("**Opus**").

RECITALS

A. On the date hereof, Opus acquired from the City the fee ownership of the real property located in Council Bluffs, Iowa, legally described on the attached Exhibit A (the "**Opus Property**").

B. The City owns or has easement rights over that certain public right-of-way located adjacent to the Opus Property and known as River Road ("**River Road**").

C. Opus and the City desire to establish an easement for purposes of allowing an underground storm water pipe to run from the Opus Property under and across the public right-of-way of River Road.

NOW, THEREFORE, for material consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Easement by the City. The City hereby grants to Opus a permanent, non-exclusive easement for the benefit of and appurtenant to the Opus Property upon, under and across River Road for purposes of installing, maintaining, repairing and replacing an underground pipe for the discharge, drainage, flow, detention, retention and management of storm water from the Opus Property, substantially in the manner and in the locations now existing or as may be reasonably needed following the development of the Opus Property.

2. Maintenance. The storm water pipe located on or to be located in River Road by Opus, including all existing pipes and related facilities are hereinafter referred to as the "**Storm Water Facilities**." Opus shall maintain, or cause to be maintained, in good order, condition and repair, the Storm Water Facilities at its sole cost and expense.

3. Indemnification. Opus shall indemnify and hold harmless the City from and against any loss, cost, damage, liability or expense (including reasonable attorneys' fees) (collectively, the "**Claims**") incurred by the City to the extent caused by (a) the negligence or willful misconduct of Opus or anyone acting by, through, or under Opus under this Agreement, or (b) the contamination by or from any "hazardous substances" or "hazardous wastes" (as such terms are defined and/or used in applicable state or federal law or the regulations issued under them, including, without limitation, the federal Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act), directly or indirectly caused by Opus or anyone acting by, through, or under Opus.

4. Authority. The City covenants that it is seized of River Road and that it has the good and lawful authority to give, grant, and convey the rights granted herein and that the persons signing below on behalf of the City has the lawful authority to bind the City to this dedication.

5. Default and Remedies. If Opus fails to perform the maintenance of the Storm Water Facilities as provided in Section 2, the City may, at any time during the continuance of such failure, give notice of the same to Opus, which notice shall describe the default. Opus shall have twenty (20) days after the receipt of such notice or, in the event of an emergency, such lesser time as may be reasonable under the circumstances, to commence the required maintenance and thereafter shall diligently complete the same. If the default has not been cured within such 20-day period (or if a maintenance default is not reasonably capable of being cured within such 20-day period, if the cure has not been commenced within such 20-day period and diligently pursued to completion), the City shall have the right, but not the obligation, to cause all any unperformed maintenance to be undertaken. If the City provides the maintenance of the Storm Management Facilities within River Road in accordance herewith, it shall be reimbursed by Opus for such maintenance costs within twenty (20) days following the date Opus receives an invoice from the City describing the maintenance and the total cost thereof. If Opus fails to pay the costs of such maintenance within twenty (20) days following receipt of written demand for the same, the amount thereof shall become a lien on the Opus Property, and the City shall be entitled to file notice of such lien in the office of the Recorder of Pottawattamie County, Iowa, in the amount of such costs. In addition, the City shall have the right to pursue any and all other remedies at law or in equity. Any lien filed pursuant to the terms of this Section 5 may be foreclosed in accordance with the statutes of the State of Iowa governing foreclosure of mechanic's liens as if such lien is a mechanic's lien. Any lien filed by the City on the Opus Property in accordance with this Section 5 shall be subordinate to the lien of a bona fide first mortgage on the Opus Property and to the lien of real estate taxes and governmental assessments.

6. No Waiver. No delay or omission by Opus or the City in the exercise of any right

accruing upon any default of the other party to this Agreement shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by Opus or the City of a breach or a default of any of the terms and conditions of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but each shall be cumulative with all other remedies provided in this Agreement and at law or in equity.

7. No Termination. It is expressly agreed that no breach, whether or not material, of the provisions of this Agreement shall entitle any party hereto to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies that any party may have hereunder by reason of any breach of the provisions of this Agreement.

8. Notices. Any notice to be given by a party to this Agreement shall be personally delivered or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section 6 (or to such other address(es) as may be designated by the parties from time to time), and shall be deemed given upon personal delivery, the date postmarked or delivery to such courier:

If to the City:

THE CITY OF COUNCIL BLUFFS, IOWA
Attn: Mayor
209 Pearl Street
Council Bluffs, IA 51503

with copy to:

City of Council Bluffs, Iowa
Attn: City Attorney
209 Pearl Street
Council Bluffs, IA 51503

If to Opus:

OPUS DEVELOPMENT COMPANY, L.L.C.
Attn.: Jason Conway
10350 Bren Road West
Minnetonka, MN 55343

with copies to:

Opus Development Company, L.L.C.
Attn: Legal Department
10350 Bren Road West
Minnetonka, MN 55343

9. Estoppel Certificate. The City shall, upon request of Opus, deliver to the requesting

owner or to any party or parties designated by it a certificate stating whether this Agreement is in full force and effect, whether it has been amended, whether to the knowledge of the City, Opus is in default in any obligation hereunder, and such further matters relating to this Agreement as Opus may reasonably request.

10. Running of Benefits and Burdens. The easement granted herein shall be perpetual and shall run with the land and shall bind the parties hereto and their respective successors and assigns.

11. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Opus is carried out.

12. Amendments. This Agreement may be modified or amended only by a written instrument executed by the City and Opus, or their respective successor owners or holders.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

14. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be originals and all of which together shall constitute one and the same instrument.

[Signatures Begin on Next Page]

SIGNATURE PAGE TO
STORM WATER DRAINAGE EASEMENT AGREEMENT
BETWEEN
THE CITY OF COUNCIL BLUFFS, IOWA
AND
OPUS DEVELOPMENT COMPANY, L.L.C.

IN AGREEMENT, Three Oaks has executed this Agreement as of the date first above written.

THE CITY OF COUNCIL BLUFFS, IOWA, a municipal corporation

By: _____
Name: _____
Its: _____

STATE OF _____, COUNTY OF _____

This record was acknowledged before me on _____, 2021, by _____, the _____, of the City of Council Bluffs, a municipal corporation under the laws of the State of Iowa.

_____
Notary Public

SIGNATURE PAGE TO
STORM WATER DRAINAGE EASEMENT AGREEMENT
BETWEEN
THE CITY OF COUNCIL BLUFFS, IOWA
AND
OPUS DEVELOPMENT COMPANY, L.L.C.

IN AGREEMENT, Grand Design has executed this Agreement as of the date first above written.

OPUS DEVELOPMENT COMPANY,
L.L.C., a Delaware limited liability company

By: _____
Cam Boyer, Chief Financial Officer

STATE OF _____, COUNTY OF _____

This record was acknowledged before me on _____, 2021, by _____, the _____, of Opus Development Company, LLC, a Delaware limited liability company.

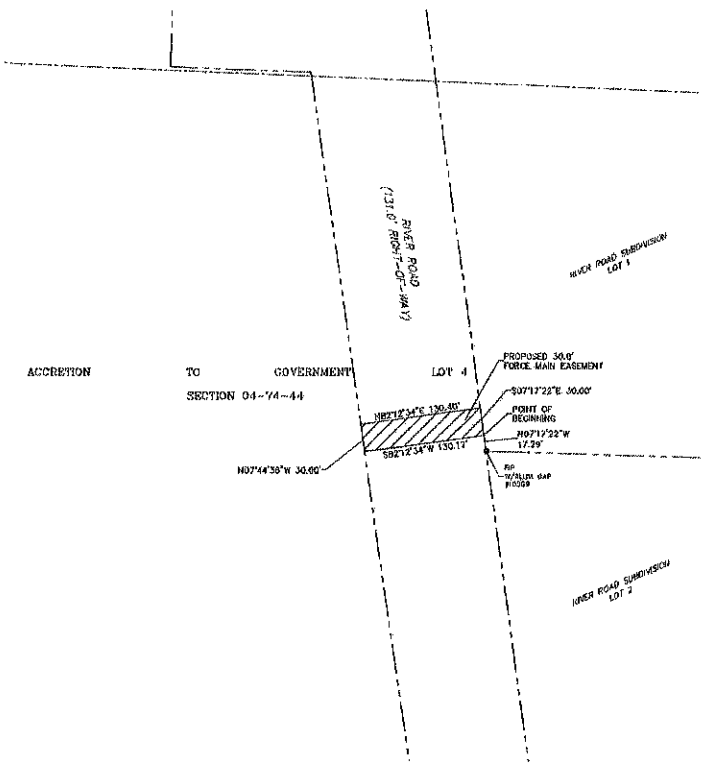
_____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF OPUS PROPERTY

Lot 1 in River Road Subdivision, an Official Plat in the City of Council Bluffs, Pottawattamie County, Iowa

EXHIBIT B

PREPARED BY: DAVID E. FORSYTHE, P.L.S., HGM ASSOCIATES INC., P.O. BOX 919, COUNCIL BLUFFS, IOWA 51502 (712) 323-0530



LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF THE ACCRETION TO GOVERNMENT LOT 4, SECTION 04, TOWNSHIP 74 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, RIVER ROAD SUBDIVISION, A PLATTED SUBDIVISION IN SAID CITY OF COUNCIL BLUFFS, SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF RIVER ROAD;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 07 DEGREES 17 MINUTES 22 SECONDS WEST, 17.29 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 82 DEGREES 12 MINUTES 34 SECONDS WEST, 130.17 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID RIVER ROAD;

THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, NORTH 07 DEGREES 44 MINUTES 36 SECONDS WEST, 30.00 FEET;

THENCE NORTH 82 DEGREES 12 MINUTES 34 SECONDS EAST, 130.46 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, SOUTH 07 DEGREES 17 MINUTES 22 SECONDS EAST, 30.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS AN AREA OF 3,909 SQUARE FEET (0.0897 ACRES), MORE OR LESS.

DAVID E. FORSYTHE 25604 IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

DAVID E. FORSYTHE — MAY 14, 2021
DATE

LICENSE NUMBER 25604

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2022

PAGES OR SHEETS COVERED BY THIS SEAL:
SHEET 1 OF 1

hgm ASSOCIATES INC.
640 BROADWAY AVENUE COUNCIL BLUFFS, IOWA
PHONE: (712) 323-0530

RIVER ROAD INDUSTRIAL DEVELOPMENT
RIVER ROAD RIGHT-OF-WAY

THE OPUS GROUP
1501 NW 118TH STREET, SUITE 200 CLIVE, IOWA 50325

90 FT FORCE MAIN EASEMENT - RIVER ROAD ROW

project no.
112020

sheet
1 OF 1