

**NOLBY BC LLC (dba JAM HOPS)
DEVELOPMENT AGREEMENT
CITY OF RAMSEY, ANOKA COUNTY, MINNESOTA**

This Agreement (hereinafter the “Agreement”) is dated as of this 26th day of September, 2023, and is by and between the City of Ramsey, a Minnesota municipal corporation (the “**CITY**”) and **NOLBY BC LLC**, a limited liability corporation under the laws of Minnesota, (the “**PERMITTEE**”).

Recitals

- A. The **PERMITTEE** is the fee title owner of land generally known as 14200 Limonite Street Northwest, Ramsey, MN 55303 and legally described as:

All that part of the West 31 rods of the Southwest Quarter of the Southwest Quarter of Section 27, Township 32, Range 25, Anoka County, Minnesota, described as follows: Commencing at a point on the West line thereof, distant 335.51 feet South from the Northwest corner thereof, as measured along said West line; thence South along said West line a distance of 335.51 feet, more or less, to its intersection with the Northerly right of way line of Northern Pacific Railway; thence Southeasterly along said Northerly right of way line to its intersection with the East line of said West 31 rods; thence North along said East line thereof a distance of 448.92 feet, more or less, to a point on said East line thereof distant 448.92 feet South from the Northeast corner of said West 31 rods as measured along said East line thereof; thence Northwesterly in a straight line to the point of beginning. Anoka County, Minnesota. Abstract Property

(the “Subject Property”)

- B. That on July 17, 2023, the **CITY** received a Site Plan Application from Kinghorn Construction on behalf of the **PERMITTEE**, proposing to construct a gymnastic training facility to operate on the **Subject Property**, and associated site improvements (cumulatively, the “New Building”).
- C. That on September 12, 2023, the City Council approved the Site Plan for the proposed New Building.

- D. The **PERMITTEE** intends to cause the Required Improvements to the **Subject Property** to be constructed without financial participation by the **CITY**.

Agreement

**SECTION I
REQUIRED IMPROVEMENTS AND FINANCIAL RESPONSIBILITIES**

1. **City Code Compliance.** The **CITY** approves the site plan (the "Site Plan") conditioned on the **PERMITTEE** developing the **Subject Property** in accordance with the applicable provisions of City Code.
2. **Conformance with the Plans.** The **Subject Property** and **Limonite Street** shall be developed in accordance with the plans (the "Plans") prepared by Hakanson Anderson, dated July 17, 2023, and revised August 30, 2023. The **Plans** remain subject to: (a) City Staff's review and approval of the **Plans** to, among other things, confirm that the revisions requested in the **CITY's** review have been made; and (b) such further revisions as the **PERMITTEE** may propose and the **CITY** approves. The **Plans** shall not be attached to this **Agreement**, but are in the **CITY's** files.
3. **Incorporation of All City Code Requirements.** That the recitals above and the applicable provisions of the City Charter and Code of the **CITY**, as amended to date hereof, are incorporated herein by reference.
4. **State Building Code Compliance.** The structure shall be constructed in accordance with the requirements of the Building Code.
5. **Fire Lanes.** Fire lanes shall be maintained on the **Subject Property**. The exact locations of these items on the **Subject Property** shall be as directed by the Fire Chief. The **PERMITTEE** herein agrees to post "No Parking" signs along private drives in accordance with City Code requirements and in conjunction with the instructions of the Fire Chief.
6. **Required Site Improvements (on site).** The **PERMITTEE** shall construct and install the following site improvements on the **Subject Property** in accordance with the specifications and location as shown on the **Plans**. The Required Improvements and the allocated costs therefor are as follows:
 - A. Grading, Drainage, and Erosion Control
 - B. Site Utilities
 - C. Landscaping and Ground Cover
 - D. Parking lots, curbing, and walkways

("Required Site Improvements")

The **PERMITTEE** agrees to construct the **Required Site Improvements** according to the terms and conditions of this **Agreement**, in accordance with the **Plans**, and in compliance with Staff review comments.

7. **Required Street Improvements (Limonite Street).** The **PERMITTEE** shall construct and install the following street improvements on **Limonite Street** in accordance with the specifications and

location as shown on the **Plans**. The Required Improvements and the allocated costs therefor are as follows:

- A. Water main
- B. Sanitary Sewer
- C. Storm Sewer
- D. Concrete curb and gutter
- E. Bituminous pavement
- F. Appropriate signage and striping
- G. Boulevard restoration

("Required Street Improvements")

The **PERMITTEE** agrees to construct the **Required Street Improvements** according to the terms and conditions of this **Agreement**, in accordance with the **Plans**, and in compliance with Staff review comments.

8. **Required Site and Street Improvements Completion Date.** The **Required Improvements** shall be completed within twenty-four (24) months from the date of Site Plan approval for the New Building, subject to Unavoidable Delays. For the purposes of this Agreement, Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, global pandemic, epidemic, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, results in delays, or acts of any federal, state or local governmental unit other than the **CITY**.
9. **Required Site and Street Improvements Financial Guaranty.** In order to ensure the installation of the **Required Site Improvements** in accordance with **CITY** specifications and in a timely manner, the **PERMITTEE** shall be required to deposit with the **CITY** a cash escrow or an irrevocable letter of credit, approved as to form by the **CITY**, in the amount of **\$923,641.00**, which is 125% of the estimated cost of the **Required Site Improvements** and the **PERMITTEE's** portion of the **Limonite Street NW Improvements**. Prior to the issuance of the building permit, the financial guaranty must be provided as required herein.

At the request of **PERMITTEE**, the **CITY** shall, not more frequently than once monthly, release that part of the Financial Guaranty for any completed portion of the Required Improvements in the amount set forth in Section 6 that have been accepted in writing by the **CITY**. Upon completion of the construction of all or any remaining of the **Required Site Improvements** and written acceptance by the **CITY**, the financial guaranty shall be returned to the **PERMITTEE** and the **PERMITTEE** shall be required to provide the landscaping maintenance guaranty described in Section III Paragraph 11 of this **Agreement**. The determination of completion of the construction of the **Required Site Improvements** shall be made by the **CITY**. In the event the **PERMITTEE** fails to construct and install the **Required Site Improvements** as required herein, the City Council may order the completion of the **Required Site Improvements** with **CITY** day labor and/or by letting contracts for said completion and draw upon the escrow for payment. Only the City Council shall have the authority to direct completion of the **Required Site Improvements** and withdraw from the escrow account. The **PERMITTEE** hereby grants permission and a license to the **CITY** and/or its contractors and assigns to enter upon the **Subject Property** for the purpose of completing the construction and installation of the **Required Site Improvements** in the event of the **PERMITTEE's** default.

10. **Site Inspection Fees.** The **PERMITTEE** shall be responsible for all site inspection costs incurred by the **CITY** related to the installation of **Required Improvements**. The **PERMITTEE** shall make a cash deposit into the appropriate escrow account at the **CITY** and the **CITY** shall have the authority to draw upon these funds for the purpose of compensating for inspection services. The amount of the deposit shall be equal to five percent (5%) of the estimated cost of the **Required Improvements**, which equates to **Thirty-One Thousand Seventy-Eight Dollars and No Cents (\$31,078.00)** (5% x \$621,555.00). Upon completion of the **Required Improvements** to the satisfaction of the **CITY**, any surplus balance remaining in the **CITY's** escrow account shall be refunded to the **PERMITTEE**.
11. **Storm Water Management Fee.** The **PERMITTEE** is responsible for satisfying applicable Storm Water Management Fee requirements for the Subject Property. **PERMITTEE** must pay a Storm Water Management Fee of **\$22,029.00** (4.14 acres x \$5,321.00 per acre).
12. **Sanitary Sewer Connection (Trunk) Fees.** The **PERMITTEE** is responsible for satisfying applicable Sanitary Sewer Trunk Fee requirements for the Subject Property. **PERMITTEE** must pay a Sanitary Sewer Trunk Fee of **\$16,821.00** (4.14 acres x \$4,063.00 per acre).
13. **Water Connection (Trunk) Fees.** The **PERMITTEE** is responsible for satisfying applicable Water Trunk Fee requirements with the Subject Property. **PERMITTEE** must pay a Water Trunk Fee of **\$30,400.00** (4.14 acres x \$7,343.00 per acre).
14. **Cost Share for Limonite Street NW Improvements.** The **PERMITTEE** and the **CITY** have agreed to pay for the improvements to Limonite Street NW jointly. Public utility extensions from the north to the connection points with the service lines shall be paid completely by the **PERMITTEE**. The **CITY** will pay for the continuation of the Sanitary Sewer and Water Main to 142nd Avenue NW. Costs associated with the roadway, including the Storm Sewer, shall be split equally between the **PERMITTEE** and the **CITY**.

The **PERMITTEE's** engineer's estimates (totals) for the street and utility work are as follows:

	PERMITTEE	CITY	Total
Sanitary Sewer and Water Main	\$39,464 (47.72%)	\$43,230 (52.28%)	\$82,694
Street and Storm Sewer	\$77,894 (50%)	\$77,894 (50%)	\$155,788

The **PERMITTEE** shall present the City Engineer detailed invoices for the work that has been completed for review and payment according to the amounts shown in the estimate. In the event the actual costs differ from the estimates, the cost split shall be based on the percentages shown in the table above.

SECTION II PERMITS AND OCCUPANCY

15. Requirements for Building Permit.

- a. No building permit shall be issued until the **PERMITTEE** has: (a) installed a Class 5 driving surface to within 300 feet of the structure for access and public safety purposes; (b) provided

the CITY Building Official with a Certificate of Survey; (c) the financial guaranty described in Section I Paragraph 9 to the CITY; and (d) obtained all necessary permits from the Lower Rum River Watershed Management Organization and has provided a copy of such permit to the CITY, if applicable; and

- b. No occupancy permit shall be issued until the PERMITTEE has: (a) constructed vehicular access into the lot, including the installation of at least one layer of bituminous surfacing; and (b) constructed all utilities and storm water facilities this Agreement requires to serve the Subject Property and such utilities and storm water facilities are in place, operational and accepted by the CITY.

SECTION III ON-SITE LANDSCAPING

16. **Maintenance Guaranty for Landscaping.** It is herein agreed that the PERMITTEE shall provide a maintenance guaranty to ensure the survival of the plantings. Said maintenance guaranty shall consist of cash or an irrevocable letter of credit, approved as to form by the CITY, in the amount of **\$7,605.00** [# plantings (43 trees and 166 shrubs) x cost/planting (\$300/tree and \$75/shrub) x 30% average non-survival rate], which shall be in effect for a two (2) year period commencing on the date of the CITY's written acceptance of said plantings as part of the **Required Site Improvements**.

At the end of the two (2) year period, the PERMITTEE shall contact the CITY to schedule a final inspection of the landscaping. The determination that all plantings that have been planted in accordance with the Plans have either survived or have been replaced shall be made by the CITY. Upon approval of the final landscape inspection by the CITY, the maintenance guaranty shall be returned to the PERMITTEE. In the event the PERMITTEE fails to maintain the required plantings for a two (2) year period, the City Council may order the replacement of plantings with CITY day labor and/or by letting contracts and draw upon the escrow for payment. Only the City Council shall have the authority to direct replacement of the plantings and withdraw from the escrow account. The PERMITTEE hereby grants permission and a license to the CITY and/or its contractors and assigns to enter upon the Subject Property for the purpose of replacing plantings in the event of the PERMITTEE default.

SECTION IV GENERAL

17. **Boulevard and Area Restoration.** The PERMITTEE shall be responsible for restoring all areas disturbed by the development grading operation in accordance with the approved erosion and sediment control plan. The PERMITTEE shall also be responsible for the cost of cleaning any soil, earth or debris from the wetlands within and adjacent to the Subject Property resulting from grading performed in the development of the land.
18. **Construction Site Maintenance.** The PERMITTEE shall adhere to all CITY ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc.
19. **Construction, Hours and Entrance Signs.** The CITY restricts construction and delivery hours to Monday through Saturday 7:00 a.m. to 10:00 p.m. The PERMITTEE is required to provide a sign at each entrance point stating delivery and construction operation hours. Said signs are not to

exceed eighty (80) square feet in size and must be clearly visible at all times during the construction period.

20. **Limonite Street As-Built Plans.** The PERMITTEE shall provide the City with as-built plans in paper and CAD formats within 60 days of completing the roadway.
21. **Estimated Cost.** It is understood and agreed that cost amounts set forth in this **Agreement** as **Required Site and Street Improvements**, unless specified as fixed amounts, are estimated provided by the PERMITTEE's engineer. The PERMITTEE agrees to pay the entire cost of said improvements including interest, engineering and legal charges.
22. **Site Plan Approval Expenses.** The PERMITTEE agrees that it will pay to the CITY all CITY expenses incurred in the approval of the **Site Plan**, including, but not limited to administration expenses, engineering and legal fees. Said expenses shall be paid within fifteen (15) days of billing by the CITY and outstanding billings shall be paid prior to issuance of the building permit. Any expenses incurred after the release of the building permit shall also be paid within said fifteen (15) day billing period. Failure to pay the CITY's expenses within the fifteen (15) day billing period will permit the CITY to draw upon any of the escrows required by this contract for payment.
23. **Reimbursement to the City.** The PERMITTEE agrees to reimburse the CITY for all costs incurred by the CITY in defense or enforcement of this **Agreement**, or any portion thereof, including court costs and reasonable engineering and attorney's fees.
24. **Invalidity of Any Section.** If any portion, section, subsection, sentence, clause, paragraph or phrase of this **Agreement** is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect or void any of the other provisions of this **Agreement**.
25. **Proof of Authority.** When the PERMITTEE is a corporation, the CITY requires proof of authority by the corporation to execute this **Agreement**. This proof of authority may be satisfied by providing the CITY with a certified copy of minutes of the corporate Board of Directors granting such authority.
26. **Violation of This Permit.** If the PERMITTEE fails to perform any of the terms of this **Agreement** in the manner required by the CITY, the CITY shall be entitled to recover, from the PERMITTEE or the issuer of PERMITTEE financial guarantee, the full amount of any and all financial guarantees. Breach of any of the terms of this **Agreement** by the PERMITTEE shall also be grounds for denial of Building Permit or issuance of Certificate of Occupancy.
27. **Certificate of Occupancy.** The term "Certificate of Occupancy" as used in this **Agreement** shall be defined as a document issued by the CITY's Building Official, which authorizes the structure to be used for its intended purposes.
28. **Agreement Binding on Successors and Assigns.** The PERMITTEE agrees that this **Agreement** shall be binding upon its successors and assigns.
29. **Notices.** Required notices shall be in writing, and shall be either hand delivered to the Parties, its employees or agents, or mailed to them by certified or registered mail at the following address:

TO PERMITTEE:

Nolby BC LLC
Attn: Brenda Nolby, President
15423 Jackson Street NE
Ham Lake, MN 55304

TO THE CITY:

City of Ramsey
Attn: Community Development Director
7550 Sunwood Drive NW
Ramsey, MN 55303

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