

**WHEN RECORDED RETURN TO:**

City Clerk  
410 W. 1<sup>st</sup> Street  
Ankeny, Iowa 50023

Preparer Information:

Matthew J. Hemphill  
Bergkamp, Hemphill, & McClure, P.C.  
Adel, IA 50003

**STORM WATER MANAGEMENT FACILITY  
MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT**

**THIS STORM WATER MANAGEMENT FACILITY MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT** is entered into between **CJR Enterprises, LLC** (hereinafter referred to as "Owner") and the **City of Ankeny, Iowa** (hereinafter referred to as "City"), in consideration for the approval by the City of Ankeny, Iowa of the Site Plan.

Owner is obligated by the Municipal Code of the City of Ankeny to control storm water runoff for the proposed development as a part of the Site Plan approval process. In consideration for the City's approval of the Owner's Site Plan, the parties enter into this Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement to control and address storm water runoff for the following described property:

SEE ATTACHED "EXHIBIT A PROPERTY LEGAL DESCRIPTION"

(hereinafter referred to as the "Property").

**PART I – COVENANTS ON THE PROPERTY**

The following provisions are covenants running with the land to the City of Ankeny, binding on all successors and assigns of the Property and shall only be amended or released with the written permission of the City.

1. Owner hereby agrees that the storm water runoff for the Property shall be controlled through installation, construction, and maintenance of a Storm Water Management Facility upon, over, under, through and across the following described property:

SEE ATTACHED "EXHIBIT B EASEMENT AREA LEGAL DESCRIPTION"

SEE ATTACHED "EXHIBIT B1 GRADING AND EROSION CONTROL PLAN"

(hereinafter referred to as the "Easement Area").

2. Owner covenants and agrees that the design, construction and maintenance of the Storm Water Management Facility shall meet the storm water runoff control requirements of the Municipal Code of the City of Ankeny, Iowa.

3. It is hereby agreed and covenanted that the above described Property receives benefit from the Storm Water Management Facility by controlling runoff from the Property to meet the requirements of the Municipal Code of the City of Ankeny, Iowa. In recognition of such benefit and to meet the maintenance, repair and replacement obligations of the Municipal Code of the City of Ankeny, Iowa, the Owner shall be responsible for the amount required for said obligations. The Owner of the Property further hereby consents and agrees to the covenants and obligations of this Agreement and by virtue of their ownership of the Property.
4. It is hereby agreed that Owner is responsible for constructing, installing and ensuring that the Storm Water Management Facility meets the standards and specifications established in the Municipal Code of the City of Ankeny, Iowa. Owner's obligations under this Agreement may not and shall not be transferred to any subsequent owner of record until the City provides written consent to Owner acknowledging that construction of the Storm Water Management Facility has been completed.
5. The Owner and all successors and assigns shall be the responsible party for replacement, reconstruction, repair, grading and maintenance of the Storm Water Management Facility.
6. The Owner and all successors and assigns shall accept notices and service of process for the Property as it relates to the inspection, replacement, reconstruction, repair, grading and maintenance of the Storm Water Management Facility or permanent easement or notice of assessment for replacement, reconstruction, repair, grading and maintenance of the Storm Water Management Facility. The Owner and all successors and assigns of the Property are responsible for complying with this Agreement.
7. The Owner shall be responsible for all maintenance, repair and replacement of the Storm Water Management Facility, including obligations set forth in Part II, paragraph 12, subsections (a) and (b) herein. The Owner is responsible for performing all other items listed in Part II, paragraph 12, subsections (c) through (i). Should any conflict arise with paragraphs 12 through 17 herein, the Owner shall have the responsibility to remove such conflict to assure effectiveness of the Storm Water Management Facility. Owner and all successors and assignees of the Property shall comply with all terms of the Easement set forth in Part II herein.
8. The Owner shall inspect the Storm Water Management Facility on an annual basis, including but not limited to all pipes, inlets and outlets for defects, obstructions or changes in the Storm Water Management Facility from the original design of the Facility. The inspection shall be conducted by a licensed professional engineer in the state of Iowa and documented with date stamped photographs of the Storm Water Management Facility. The Owner shall document such inspection by completing the Inspection Report Form available from the City of Ankeny Public Works Department. Any deficiencies or defects noted by the inspection shall be corrected by the Owner. The Inspection photographs and Inspection Report Form shall be submitted to the City for review and shall be kept and maintained for a period of 5 years from the date of inspection.
9. The Owner hereby agrees and consents on behalf of itself and all successors and assigns of the Property to assessment of the costs of maintaining, reconstructing, repairing, grading or dredging the Easement Area and Storm Water Management Facility on the Property. Owner, on behalf of itself and all successors and assigns of the Property, shall execute an Agreement and Waiver in favor of the City to allow the City to recover any costs expended for action taken as set forth in paragraph 10, below, to address the maintenance, reconstruction, repair, grading or dredging of the Storm Water Management Facility or Easement Area.
10. Should the Owner fail to maintain, reconstruct, repair, grade or dredge the Storm Water Management Facility or the Easement Area upon notice from the City, the City may cause such action to be done and assessed to the Property.

The assessments on the Property shall be immediately due and payable to the City pursuant to the terms of the Agreement and Waiver (see Exhibit C, attached hereto and made a part hereof).

**PART II – EASEMENT FOR STORM WATER MANAGEMENT FACILITY  
AND DRAINAGE**

The following provisions in Part II herein are for a permanent easement over the Easement Area running with the land to the City of Ankeny and the Owner.

11. The Owner hereby grants the City a Permanent Easement for Storm Water Management Facility and Drainage under, over, through and across the Easement Area described above for the purpose of constructing, reconstructing, repairing, grading and maintaining the Storm Water Management Facility and the surface of the Easement Area in a manner that will permit the free and unobstructed flow of surface water over the Easement Area described above.
12. It is the obligation of the Owner and all subsequent owners of the above described easement area to maintain the Easement Area and the Storm Water Management Facility as set forth below. The Owner and all subsequent owners of the Easement Area shall perform the maintenance obligations set forth below in items (a) and (b). The Owners shall perform all maintenance obligations set forth below in items (c) through (i). The Owner and all subsequent property owners of the Easement Area shall maintain the Easement Area so not to conflict with the maintenance requirements of the Owners or the Owners' right to perform those maintenance obligations. The maintenance obligations for the Storm Water Management Facility are as follows:

**Storm water detention and retention ponds or basins:**

- a. Mow on a regular basis to maintain the vegetation at the height designated on the original design to prevent erosion.
- b. Remove all trash, litter, debris or obstructions in the basin in the Easement Area and any inlets or outlets located within the Easement Area.
- c. Plant, maintain and replant as necessary permitted vegetation.
- d. Inspect for any defects, obstructions, or any changes in the original design.
- e. Inspect and determine the depth of the pond or basin on an annual basis.
- f. Remove any accumulated sediment from the outlet structures and remove any sediment which may accumulate greater than 12 inches in ponds or basins and greater than 6 inches in an underground detention basin.
- g. Till the soil at the bottom of the riparian buffer if it does not drain out within the time established in the design plan and replant vegetation as designated on the original design.
- h. All repairs shall conform to the original design.
- i. Maintaining the storm water and retention pond or basin to assure the effectiveness for storm water runoff for the subdivision/site.

**Grass and Bioretention Swales:**

- a. Mow on a regular basis to maintain the vegetation at the height designated on the original design to prevent erosion.
- b. Remove all trash, litter, debris or obstructions in the grass or bioretention swale and Easement Area.
- c. No chemicals or substances shall be applied to the Easement Area that shall harm or impair the effectiveness of the swale as a storm water runoff control measure.
- d. Replant vegetation as soon as practical when any vegetation dies.
- e. Inspect and determine the depth of the swale on an annual basis.
- f. Remove any sediment accumulated greater than 6 inches which may accumulate in the swale.
- g. Till the soil at the bottom of the swale if the grass swale does not drain out within the time established in the design plan and replant vegetation as designated on the original design.
- h. All repairs shall conform to the original design.
- i. Maintain the grass and/or bioretention swale to assure the effectiveness for storm water runoff for the subdivision/site.

Riparian Buffer:

- a. Mow on a regular basis to maintain the vegetation at the height designated on the original design to prevent erosion.
  - b. Replant the vegetation in the Easement Area as soon as practical when any vegetation dies.
  - c. Remove all trash, litter, debris or obstructions in the Easement Area.
  - d. Inspect for erosion in the riparian buffer on an annual basis.
  - e. Inspect and determine the depth of the riparian buffer on an annual basis.
  - f. Remove any sediment accumulated greater than 25% of the original design depth.
  - g. Till the soil at the bottom of the riparian buffer if it does not drain out within the time established in the design plan and replant vegetation as designated on the original design.
  - h. All repairs shall conform to the original design.
  - i. Maintain the riparian buffer to assure the effectiveness for storm water runoff for the subdivision/site.
13. No chemicals or any substance shall be applied to the storm water maintenance facility that shall harm or impair the effectiveness of the storm water maintenance facility as a storm water runoff control measure.
  14. No structure shall be erected over or within the Easement Area without obtaining the prior written approval of the City Engineer.
  15. No structure, material, device, thing or matter which could possibly obstruct or impede the normal flow of surface water over the Easement Area shall be erected or caused to be placed on the Easement Area without obtaining the prior written approval of the City Engineer.
  16. No planting of trees and shrubs is allowed within the easement area (other than planting allowed and required by the City of Ankeny).
  17. No change shall be made to the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer.
  18. The Owners, the City and their agents, contractors, employees and assigns shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to remove any unauthorized plantings or structures placed or erected on the Easement Area and the right to do maintenance, repair, reconstruction, grading and dredging.
  19. The Owner covenants on behalf of the Property that the Easement Area or any other area appurtenant to or necessary for the operation of the Storm Water Management Facility shall not be sold, transferred, donated or in any other manner conveyed in order to relieve the Owner or the Property from complying with the requirements of this Agreement.
  20. This Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement and Agreement and Waiver shall be deemed to run with the land and shall be binding on Owner and on Owner's successors and assigns.

The Owner does hereby covenants with the City that Owner holds said real estate described in this Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement by Title In Fee Simple; that Owner has good and lawful authority to convey the same; and said Owner covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Signed this 30<sup>th</sup> day of June, 2017

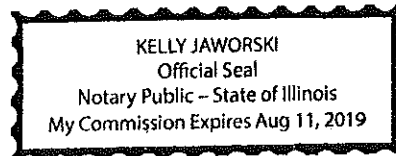
Owner:

By:

Name:

Title:

[Signature]  
Jeffrey Shaughan  
Manager



STATE OF ILLINOIS, COUNTY OF KANE, ss:

On this 30<sup>th</sup> day of June, 2017, before me, the undersigned, a Notary Public in and for said County and State personally appeared Owner, to me personally known, who being by me duly sworn, did say that he is General Manager, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the Limited Liability Company, by it and by him voluntarily executed.

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

CITY OF \_\_\_\_\_, IOWA

I, \_\_\_\_\_, City Clerk of the City of Ankeny, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Ankeny by Resolution and Roll Call No. \_\_\_\_\_, passed on the \_\_\_\_\_ day of \_\_\_\_\_, and this certificate is made pursuant to authority contained in said Resolution.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Clerk of the City of Ankeny, Iowa

STATE OF IOWA, COUNTY OF POLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the said State, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he is the \_\_\_\_\_ of the corporation executing the within and foregoing instrument to which this is attached; that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that \_\_\_\_\_, as said officer, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

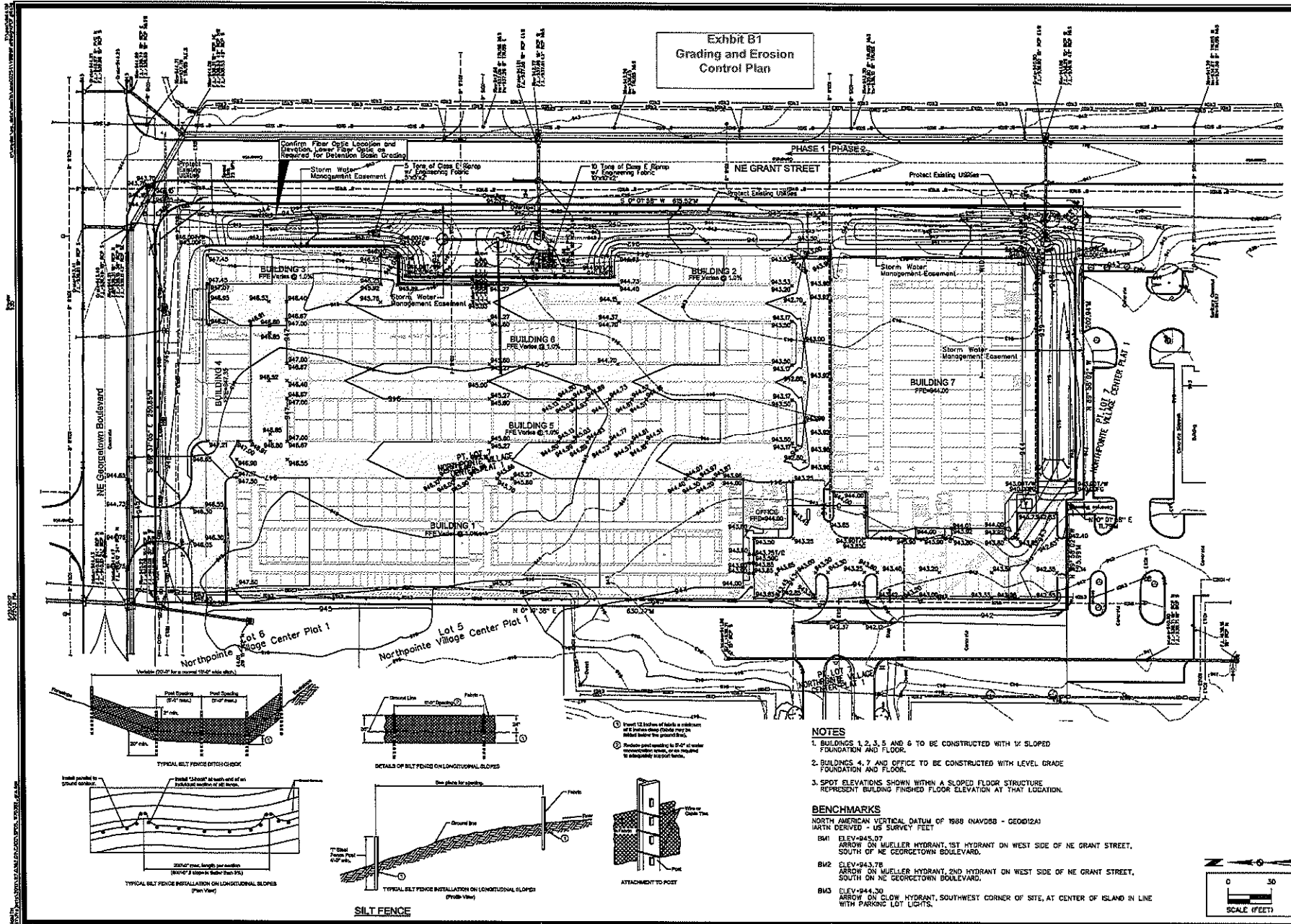
**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTION**

PARCEL 2017-040 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16411, PAGE 73 IN THE OFFICE OF THE POLK COUNTY RECORDER'S OFFICE, BEING A PART OF LOT 7, NORTHPOINTE VILLAGE CENTER PLAT 1, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF ANKENY, POLK COUNTY, IOWA.

**EXHIBIT B**  
**EASEMENT AREA LEGAL DESCRIPTION**

A PART OF PARCEL 2017-40 BEING A PART OF LOT 7, NORTHPOINTE VILLAGE CENTER PLAT 1, AN OFFICIAL PLAT, AS SHOWN IN PLAT OF SURVEY RECORDED IN BOOK 16411, PAGE 73 OF THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2017-40; THENCE NORTH 89° 58' 02" WEST ALONG THE SOUTH LINE OF SAID PARCEL 2017-40, A DISTANCE OF 202.94 FEET; THENCE NORTH 00° 01' 58" EAST, 33.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 160.00 FEET; THENCE NORTH 58° 02' 49" EAST, 15.26 FEET; THENCE NORTH 00° 01' 58" EAST, 285.00 FEET; THENCE NORTH 89° 58' 02" WEST, 21.00 FEET; THENCE NORTH 00° 01' 58" EAST, 140.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 21.00 FEET; THENCE NORTH 00° 01' 58" EAST, 100.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 30.00 FEET TO THE EAST LINE OF SAID PARCEL 2017-40; THENCE SOUTH 00° 01' 58" WEST ALONG SAID EAST LINE, 566.08 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.59 ACRES (25,682 S.F.).



REVISED PER CITY COMMENTS	04/20/11	AKS
REVISION	DATE	BY
Engineer: KAM	Drawn: BNC	Book: 1-20
Technical: AMS	Date: 04/28/11	File: 14416c
Project No: 1170362	Sheet: 5 of 7	

AAA STORAGE, INC., NEW FACILITY	ANKENY, IOWA
GRADING AND EROSION CONTROL PLAN	
<b>SNYDER &amp; ASSOCIATES, INC.</b>	
8722 S.W. ANKENY BLVD. ANKENY, IOWA 50021 615-964-2000   www.snyder-assoc.com	

**SNYDER & ASSOCIATES**

Project No: 1170362

Sheet 5 of 7



**EXHIBIT C**

**AGREEMENT AND WAIVER  
POST CONSTRUCTION STORM WATER MANAGEMENT**

**THIS AGREEMENT** made and entered into by and between the City of Ankeny, Iowa, hereinafter referenced the "CITY", and CJR Enterprises, LLC, hereinafter referenced the "OWNER".

**WITNESSETH:**

**WHEREAS**, the City desires to encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services, and utilities; and

**WHEREAS**, the Owner, as the developer and/or owner of a construction or reconstruction project in the City of Ankeny, is subject to the program implemented by the City to address storm water runoff from the project; and

**WHEREAS**, in order to comply with the program implemented by the City, the Owner has executed a Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement (hereinafter "Agreement") with the City to address the rights and obligations of the parties regarding control of post-construction storm water runoff from the project; and

**WHEREAS**, a provision of the Agreement requires the Owner to execute this Agreement and Waiver in favor of the City to allow the City to recover any costs expended for action taken by the City, its consultants, contractors and assigns to address the maintenance, reconstruction, repair, grading or dredging of the Storm Water Management Facility or Easement Area if the Owner or the Owner's successors and assigns fail to do so; and

**WHEREAS**, this Agreement and Waiver is made in conjunction with the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement located on:

A PART OF PARCEL 2017-40 BEING A PART OF LOT 7, NORTHPOINTE VILLAGE CENTER PLAT 1, AN OFFICIAL PLAT, AS SHOWN IN PLAT OF SURVEY RECORDED IN BOOK 16411, PAGE 73 OF THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2017-40; THENCE NORTH 89° 58' 02" WEST ALONG THE SOUTH LINE OF SAID PARCEL 2017-40, A DISTANCE OF 202.94 FEET; THENCE NORTH 00° 01' 58" EAST, 33.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 160.00 FEET; THENCE NORTH 58° 02' 49" EAST, 15.26 FEET; THENCE NORTH 00° 01' 58" EAST, 285.00 FEET; THENCE NORTH 89° 58' 02" WEST, 21.00 FEET; THENCE NORTH 00° 01' 58" EAST, 140.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 21.00 FEET; THENCE NORTH 00° 01' 58" EAST, 100.00 FEET; THENCE SOUTH 89° 58' 02" EAST, 30.00 FEET TO THE EAST LINE OF SAID PARCEL 2017-40; THENCE SOUTH 00° 01' 58" WEST ALONG SAID EAST LINE, 566.08 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.59 ACRES (25,682 S.F.).

and applies to the property described as:

PARCEL 2017-040 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16411, PAGE 73 IN THE OFFICE OF THE POLK COUNTY RECORDER'S OFFICE, BEING A PART OF LOT 7, NORTHPOINTE VILLAGE CENTER PLAT 1, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF ANKENY, POLK COUNTY, IOWA.

**NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES AS FOLLOWS:**

1. In the event the Owner or its successors and assigns fail to comply with the requirements of the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement regarding any action necessary for the maintenance, reconstruction, repair, grading or dredging of the Storm Water Management Facility or Easement Area, the City shall have the right to cause the above-described actions completed in accordance with such plans and specifications as it shall deem appropriate.
2. For the purpose of this Agreement, the City may elect to enter into a contract for the completion of such actions as a part of any contract(s) and assess the cost of such actions to the Owner or its successors and assigns pursuant to the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement.
3. In consideration for the completion of such actions by the City, the undersigned Owners hereby WAIVE the following:
  - A. All legal formalities of whatsoever kind or character required by the laws of Iowa to be observed by cities in the completion of said actions where the expense of such Improvements is to be assessed against private property; and
  - B. Each and every question of jurisdiction, the intention of the Owners being to authorize and direct said City to complete such actions without requiring any of the formalities or legal proceedings required of cities by the statutes of Iowa; and
  - C. Any limitation of the amount of said assessment as a percentage of valuation as provided in the Code of Iowa; and
  - D. Any right to defer or postpone the payment for any such action.
4. It is further agreed that:
  - A. When said actions have been constructed or completed in accordance with the plans and specifications, the City may make assessments against the properties of the undersigned Owners, or their successors or assigns, for their pro-rata share of the entire cost of the construction and/or completion of said actions.
  - B. Said assessments shall be due immediately and will be paid to the City of Ankeny and shall constitute a lien upon the properties hereinafter described. Further, each of the undersigned Owners hereby agree to accept responsibility for the assessment which is thus assessed against the Owner's property.
  - C. Said assessments shall have the same legal force and effect as if all the legal formalities provided by law in such cases had been fully and faithfully performed and observed.
5. The amount and proportion of the cost of the actions completed by the City to be paid shall be ascertained and determined by the Engineers and reported to the City Council, which shall make such changes or alterations as they may require. When said costs are determined and approved by the City Council, they shall constitute the assessments against the properties.
6. The Owners retain the right to request of the City a review of the mathematical calculations made to ensure their accuracy.
7. Owners hereby authorize the City Council to pass any Resolution requisite or necessary to order and secure said actions, to provide for the construction of the same and to make the assessments herein provided for, without further notice to said Owners or any of them. Any such Resolution may contain recitals that said actions are ordered or made by the Council without petition of Owners, without in any way qualifying this Agreement or releasing the Owners from their obligation to pay the assessments levied against their property for the cost of said action.
8. Each Owner warrants that the real estate described below is free and clear of all liens and encumbrances other than for ordinary taxes, except for such liens as are held by lienholders hereinafter listed and designated as

signers of this Agreement and Waiver. Each lienholder designated below, by execution of this Agreement and Waiver, consent to the subordination of its lien to the lien of the assessment levied pursuant hereto.

9. Each Owner further agrees that the terms of this Agreement and Waiver shall become a covenant which runs with the land of the below-referenced property, and shall be binding upon all successors and assigns. Furthermore, each Owner shall give a copy of this Agreement and Waiver to all successors and assigns.
10. The signatories and the City agree this document will be recorded in the office of the appropriate county recorder to ensure that any and all future purchasers of property are put on notice of the above conditions.

**OWNER NAME: CJR ENTERPRISES, LLC**

By

Name

Date

Witness

Name

**LENDER NAME:**

By:

Name:

Title: