

Prepared By: Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
Return To: City of Ankeny, Iowa, City Clerk, 410 W. 1st St., Ankeny, IA 50023

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

THIS STORM WATER MANAGEMENT FACILITY MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT (this "Agreement") is entered into between Hunziker Land Development Company, L.L.C., an Iowa limited liability company, or the successors and assigns thereof ("Grantor") and the City of Ankeny, Iowa ("City" and "Grantee"), in consideration for the approval by the City of the subdivision plat. The parties enter into this Agreement to control and address storm water runoff for the following described property:

Lots Three (3) and Four (4), Hidden Creek Plat 2, Ankeny, Polk County, Iowa

(collectively, the "Benefitted Property").

PART 1 - COVENANTS ON THE BENEFITTED PROPERTY

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

- A. Grantor hereby agrees that the storm water runoff for the subdivision/site shall be controlled through installation, construction and maintenance of a storm water detention basin (the "Storm Water Management Facility") upon, over, under, through and across that part of the Benefitted Property as identified on the attached Exhibit A (the "Easement Area").
- B. Grantor 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.
- C. It is hereby agreed and covenanted that the above described Benefitted Property receives benefit from the Storm Water Management Facility by controlling runoff from the Benefitted Property to meet the requirements of the Municipal Code of the City.

- D. It is hereby agreed that Grantor is solely responsible for constructing, installing and ensuring the Storm Water Management Facility meets the standards set forth in the Municipal Code of the City.
- E. Grantor shall be responsible for maintenance, repair and replacement of the Storm Water Management Facility. Should any property owner do anything in conflict with this Agreement, Grantor shall have the responsibility to remove such conflict to assure effectiveness of the Storm Water Management Facility. Grantor and all successors and assignees of the Benefitted Property shall comply with all terms of the Easement set forth in Part II herein.
- F. Grantor shall inspect the Storm Water Management Facility on an annual basis. The inspection shall include inspecting the Storm Water Management Facility, including but not limited to all pipes, inlets and outlets, for defects, for any obstructions, for any changes in the Storm Water Management Facility from the original design of the facility. The inspection shall be documented with a written report. Any deficiencies or defects noted by the inspection shall be corrected by Grantor.
- G. Should Grantor 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 make an assessment against the Benefitted Property which shall be a lien on the Benefitted Property and placed on the tax bill and collected as ordinary tax.
- H. Grantor hereby agrees and consents on behalf of itself and all successors and assigns of the Benefitted Property to assessment of the costs of maintaining, reconstructing, repairing, grading or dredging the Easement Area and Storm Water Management Facility on the Benefitted Property established by the Grantor pursuant to this Agreement and further waives any right to appeal such assessment excepting the corrections of any errors in the calculation of the reasonable and necessary costs incurred by the City to restore the Storm Water Management Facility to substantial compliance with the Municipal Code of the City, and any error in the allocation of such costs against the Benefitted Property as set forth herein. Furthermore, Grantor, on behalf of itself and all successors and assigns of the Benefitted Property, shall execute an Agreement and Waiver (the "Waiver") in favor of the City to allow the City to recover any costs expended for action taken to address the maintenance, reconstruction, repair, grading, or dredging of the Storm Water Management Facility or Easement Area. The Waiver shall be in substantially the same form as the attached Exhibit B, said form incorporated herein by this reference as if fully set forth.

PART II - EASEMENT FOR STORM WATER MANAGEMENT FACILITY

- I. Grantor hereby grants the City a permanent storm water management facility easement (the "Easement") 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.

- J. It is the obligation of the Grantor to maintain the Easement Area and the Storm Water Management Facility as set forth below. The Grantor and all subsequent property owners of the Easement Area shall maintain the Easement Area in accordance with the following:
- 1 Mow, if required, on a regular basis to maintain the vegetation at the height designed on the original design to prevent erosion;
 - 2 Remove all trash, litter, debris or obstructions in the basin in the Easement Area and any inlets or outlets located within the Easement Area;
 - 3 On a monthly basis during the growing season, plant, maintain and replant as necessary permitted vegetation;
 - 4 Conduct quarterly inspections for any defects, obstructions, or any changes in the original design;
 - 5 Inspect and determine the depth of the basin on an annual basis;
 - 6 Remove any accumulated sediment from the outlet structures and remove any sediment greater than the original design depth;
 - 7 All repairs shall conform to the original design; and
 - 8 Maintain the Storm Water Management Facility to assure the effectiveness for storm water runoff for the Benefitted Property.
- K. No chemicals or any substance shall be applied to the Storm Water Management Facility that shall harm or impair the effectiveness of the Storm Water Management Facility as a storm water runoff control measure.
- L. No structure shall be erected over or within the Easement Area without obtaining the prior written approval of the City Engineer.
- M. No structure, material, device, thing or matter which could possibly obstruct or impede the natural 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.
- N. The City and its agents, contractors, employees and assigns shall have the right to 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.
- O. This Agreement and the Waiver shall be deemed to run with the land and shall be binding on Grantor and Grantor's successors and assigns.

Grantor does hereby covenant with the City that Grantor holds said real estate described in this

Agreement by title in fee simple subject to the records in the Polk County, Iowa Recorder's Office; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

The undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this 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 on this the 4th day of June, 2020.

(SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF STORM WATER MANAGEMENT FACILITY MAINTENANCE
COVENANT AND PERMANENT EASEMENT AGREEMENT**

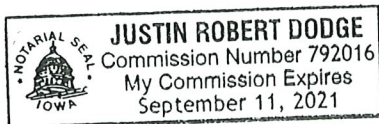
HUNZIKER LAND DEVELOPMENT COMPANY, L.L.C., Grantor

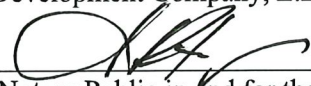
By: 
Dean E. Hunziker, Manager

By: 
Charles E. Winkleblack, Manager

STATE OF IOWA, COUNTY OF STORY:

This record was acknowledged before me on this 4th day of June, 2020, by Dean E. Hunziker and Charles E. Winkleblack, as Managers of Hunziker Land Development Company, L.L.C.




Notary Public in and for the State of Iowa
My commission expires Sept 11, 2021

ACCEPTANCE BY CITY OF ANKENY, IOWA

CITY OF ANKENY, IOWA,
an Iowa municipal corporation

By: _____
Gary Lorenz, Mayor

By: _____
Denise Hoy, City Clerk

STATE OF IOWA, COUNTY OF POLK:

On this _____ day of June, 2020, before me, the undersigned, a Notary Public in and for said County and the State of Iowa, personally appeared Gary Lorenz and Denise Hoy, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ankeny, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of Ankeny, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa
My commission expires _____

EXHIBIT A

A PART OF LOT 4, HIDDEN CREEK PLAT 2, BEING AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 85°53'20" EAST, 56.06 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°13'35" EAST, 50.17 FEET; THENCE SOUTH 89°46'24" EAST, 172.06 FEET; THENCE SOUTH 00°13'00" WEST, 67.22 FEET; THENCE NORTH 89°46'18" WEST, 36.67 FEET; THENCE WESTERLY ALONG A CURVE, CONCAVE NORTHEASTERLY, WHOSE RADIUS IS 447.50 FEET, WHOSE ARC LENGTH IS 137.00 FEET, AND WHOSE CHORD BEARS NORTH 82°35'41" WEST, 136.47 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.25 ACRES (10,887 S.F.)

and as more particularly shown on the Stormwater Management Facility Easement exhibit attached hereto.

EXHIBIT B
AGREEMENT AND WAIVER
POST CONSTRUCTION STORM WATER MANAGEMENT

THIS AGREEMENT AND WAIVER made and entered into by and between the City of Ankeny, Iowa, hereinafter referred to as the CITY OF ANKENY, IOWA (the "City"), and HUNZIKER LAND DEVELOPMENT COMPANY, L.L.C. (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, 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 (the "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 (as that term is defined in the Agreement) or Easement Area (as that term is defined in the Agreement) 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 Agreement located on the Benefitted Property (as that term is defined in the Agreement) and applies to the Easement Area (as that term is defined in the Agreement).

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

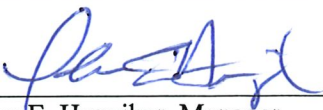
1. In the event the Owner or its successors and assigns fail to comply with the requirements of the Agreement regarding any action necessary for the maintenance, reconstruction, repair, grading, or dredging of the Storm Water Management Facility or Easement Area, the City shall have the right to cause the above-described actions completed in accordance with such plans and specifications as it shall deem appropriate.
2. For the purpose of this Agreement and Waiver, 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.
3. In consideration for the completion of such actions by the City, the undersigned Owner hereby **WAIVES** 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 Owner 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 Code 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 Owner, 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 and shall constitute a lien upon the properties hereinafter described. Further, the undersigned Owner hereby agrees to accept responsibility for the assessment which is thus assessed against the property of the Owner.
 - 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 City Engineer 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 Owner retains the right to request of the City a review of the mathematical calculations made to ensure their accuracy.
7. Owner hereby authorizes 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 the Owner. Any such Resolution may contain recitals that said actions are ordered or made by the City Council without petition of the Owner, without in any way qualifying this Agreement and Waiver or releasing the Owner from its obligation to pay the assessments levied against their property for the cost of said action.
8. The 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. The 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, the 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.

HUNZIKER LAND DEVELOPMENT COMPANY, L.L.C., Grantor

By: 
Dean E. Hunziker, Manager

By: 
Charles E. Winkleblack, Manager