

WHEN RECORDED RETURN TO: City of Ankeny, City Clerk, 410 West First Street, Ankeny, IA 50023

Preparer Information: Samantha Hayden, 220 West First Street, Ankeny, Iowa 50023

(515) 963-3541

SPACE ABOVE THIS LINE FOR RECORDER

### **Development Agreement**

Whereas, Diamond Development, LLC, an Iowa Limited Liability Company, (hereinafter "Developer") is in the process of developing property in the northwestern portion of the city of Ankeny legally described on Exhibit "A" (hereinafter "Developer's Property"); and

Whereas, construction of the Trestle Ridge Sanitary Trunk Sewer (an extension of the Rock Creek Trunk Sewer) is needed to facilitate the development of the Developer's Property as well as other areas of the City of Ankeny, and the City of Ankeny, Iowa (hereinafter "City") has not programmed the Trestle Ridge Sanitary Trunk Sewer in the City's capital improvement plan; and

Whereas, since the City is not in the position to construct the Trestle Ridge Sanitary Trunk Sewer in compliance with the time table of the Developer, the Developer has approached the City offering to construct the Trestle Ridge Sanitary Trunk Sewer to serve the Developer's Property; and

Whereas, the City is agreeable to allowing the construction of said sanitary sewer ahead of the City's schedule under the following terms and conditions.

Now, therefore, it is hereby agreed as follows:

1. The Developer agrees to design and complete all plans and specifications for the construction of the sanitary sewer known as the Trestle Ridge Sanitary Trunk Sewer Project. The engineering cost estimate to design, survey and administer the sanitary sewer construction is \$29,450.00

2. Developer agrees to provide sanitary sewer easements, as needed, to the City in a form reasonably agreed to between the parties. Specifically, the Developer agrees to provide

permanent sanitary sewer easements for the Trestle Ridge Sanitary Trunk Sewer to the City prior to the City's acceptance of the improvement. The off-site easement cost is \$22,790.00

3. Developer agrees to obtain a minimum of three competitive bids for construction of the sanitary sewer in compliance with the plans and specifications prepared by the Developer and, in consultation with the City, choose the lowest responsible bidder for construction of the sanitary sewer.

4. Developer agrees to convey the sanitary sewer to the City, after construction, and to provide such bonds, including a maintenance bond, and a televised report of the trunk sewer as are required by the City for all sanitary sewer projects.

5. Developer agrees to construct the sanitary sewer as shown on the approved construction plans for the Trestle Ridge Sanitary Trunk Sewer Project as soon as possible after selection of the successful bidder and to diligently pursue completion of the sanitary sewer.

6. The Trestle Ridge Sanitary Trunk Sewer extension will benefit approximately 105.27 acres of the Developer's Property as legally described on Exhibit "A". In the event that the sanitary sewer is completed to the City's satisfaction in compliance with this Agreement, the City agrees to credit the Developer for the connection fees of a portion of the Developer's Property as described below:

\$3,625/AC (2018 connection fee for Rock Creek Trunk Sewer Connection District 3)

Trunk Sewer Costs

Engineering cost:	+	\$29,450.00
Off-site easement cost:	+	\$22,790.00
Sewer construction cost:	+	\$353,050.00
Seeding and erosion control cost:	+	\$1,300.00
Permits, fees, etc.:	+	<u>\$100.00</u>
Total:		\$406,690.00

$\$406,690 / \$3,625 = 112.19$  acres of connection fees credited

7. Since the amount of acres of connection fees to be credited to the Developer (112.19 acres) is greater than the amount of acres of the Developer's property as legally described on Exhibit "A" (105.27 acres), the City agrees to reimburse the Developer for the additional 6.92 acres of connection fees credited for construction of the Trestle Ridge Sanitary Trunk Sewer. This reimbursement will occur as connection fees are paid by benefited property owners of the Trestle Ridge Sanitary Trunk Sewer as future development occurs. Any connection fees collected from benefited property owners shall be paid first to the Developer until reimbursement of the 6.92 acres of connection fee credits have been achieved, with any remaining fees paid to the City.

8. In the event the Developer fails to comply with any term of this Agreement, the City may take whatever action the City deems necessary and appropriate, including, but not

limited to, an action for condemnation to obtain the easement required for the sanitary sewer and the installation of the same for the benefit of the City. In such event, the City shall be entitled to reimbursement for all costs, fees and award amounts, if any, incurred by the City resulting from the Developer's failure to comply with this Agreement.

9. The terms of this Agreement shall be deemed to be covenants running with the land and shall be binding upon the developer's property, the successors and assigns of the Developer.

In Witness Whereof, the City has caused this Agreement to be duly executed in its name and on its behalf by its Mayor and its seal is hereto duly affixed and attested by its Clerk and Developer has caused this Agreement to be executed by its duly authorized representative.

Dated the 4<sup>th</sup> day of JANUARY, 2018.

**The City of Ankeny, Iowa**

By: \_\_\_\_\_  
Gary Lorenz, Mayor

ATTEST:

By: \_\_\_\_\_  
Pamela DeMouth, City Clerk

**Diamond Development, LLC.**

By: [Signature]  
Print Name: DARRYL BRESSON  
Title: MANAGING MEMBER



STATE OF IOWA, POLK COUNTY, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Gary Lorenz** and **Pamela DeMouth**, 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**; that the seal affixed to the foregoing instrument to which this is attached is the corporate seal of the City; that the instrument was signed and sealed on behalf of the City by authority of its City Council, as contained in Ordinance Resolution No. \_\_\_\_\_ passed by resolution of the City Council under Roll Call No. \_\_\_\_\_ of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2018; and that **Gary Lorenz** and **Pamela DeMouth**, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the City, by it and by them voluntarily executed.

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

STATE OF IOWA, COUNTY OF POLK, ss:

On the 4 day of January, 2018, before me, the undersigned, a Notary Public in and for the said State, personally appeared Darby Porsson, to me personally known, who being by me duly sworn, did say that he/she is the Manager of Diamond Development, an Iowa Limited Liability Company; that the instrument was signed on behalf of the limited liability company by authority of its members; and that he/she as manager acknowledges execution of the instrument to be the voluntary act and deed of the limited liability company by it and be him/her voluntarily executed.

Jill M Edler  
NOTARY PUBLIC IN AND FOR THE STATE OF IOWA



EXHIBIT "A"

-EX E 341F S 279F N 1323.54F NE 1/4- S 379.5F NE 1/4 NE 1/4 & SE 1/4 NE 1/4 LESS 1.64A  
RD SEC 9-80-24, and;

-EX S 353F N 936.2F E 288F- SE 1/4 N OF UP RR ROW LESS RD SEC 9-80-24, and;

S 200F SW 1/4 NE 1/4 SEC 9-80-24, and;