

WHEN RECORDED RETURN TO:

City Clerk
410 W. 1st Street
Ankeny, Iowa 50023

Preparer Information: Wasker, Dorr, Wimmer & Marcouiller, PC, Matthew M. Hurn, 4201 Westown Pkwy #250
West Des Moines, IA 50266, 515-283-1801

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

This agreement is being filed to amend and replace the initial agreement filed on October 17, 2016 in Book 16227 at Page 190 and Amended agreement filed on June 12, 2017 in Book 16518 at Page 591 and Amended agreement filed on November 13, 2018 in Book 17144 at Page 464.

THIS STORM WATER MANAGEMENT FACILITY MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT is entered into between **Kimberley Properties, Inc.** (hereinafter referred to as "Grantor") and the **City of Ankeny, Iowa** (hereinafter referred to as "City"), in consideration for the approval by the City of Ankeny, Iowa of the Final Plat.

Grantor 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 Final Plat permit approval process. In consideration for the City's approval of the Grantor's Final Plat, 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:

Lots 1 and 2 in Autumn Crest Plat 6, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

And

Lots 1 in Autumn Crest Plat 7, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

(hereinafter referred to as the "Benefited Property").

PART I – COVENANTS ON THE BENEFITED PROPERTY

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

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

A PART OF LOT 2, AUTUMN CREST PLAT 6, AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 00°13'42" WEST ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 50.74 FEET; THENCE SOUTH 89°53'58" WEST, 169.79 FEET; THENCE NORTH 06°26'56" WEST, 51.60 FEET TO THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 89°55'22" EAST ALONG SAID NORTH LINE, 175.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8,813 SQUARE FEET).

And

A PART OF LOT 1, AUTUMN CREST PLAT 7, AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89°55'22" WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 375.74 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 0°26'23" WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET; THENCE NORTH 86°16'29" EAST, 376.99 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 0°13'42" WEST ALONG SAID EAST LINE, 55.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.37 ACRES (15,978 SQUARE FEET).

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

2. 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 of Ankeny, Iowa.
3. It is hereby agreed and covenanted that the above described Benefited Property receives benefit from the Storm Water Management Facility by controlling runoff from the Benefited 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, each of the Benefited Property owners ("Owners") in Autumn Crest Plat 6 and Autumn Crest Plat 7 shall be responsible for the proportionate share (determined by the number of lots in the Benefited Property) of any amount required for said obligations. Every owner of a Benefited Property hereby consents and agrees to the covenants and obligations of this Agreement and by virtue of their ownership of a portion of the Benefited Property.
4. It is hereby agreed that Grantor is solely 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. Grantor's obligations under this Agreement may not and shall not be transferred to the Owners until the City provides written consent to Grantor acknowledging that construction of the Storm Water Management Facility has been completed.
5. Grantor hereby designates, appoints and agrees on behalf of Grantor and all successors and assigns that the Owners are designated as the responsible party for replacement, reconstruction, repair, grading and maintenance of the Storm Water Management Facility.
6. Grantor hereby covenants and agrees that the Owner of Autumn Crest Plat 6 and Autumn Crest Plat 7 is hereby designated and authorized by Grantor and all successors and assigns to accept notices and service of process for all Benefited Property Owners 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 Owners of the Benefited Property are responsible for complying with this Agreement.
7. The Owners 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 that are the obligation of the property owner of the Easement Area, should any property owner of the Easement Area not perform or fail to perform such obligations. The Owners are responsible for performing all other items listed in Part II, paragraph 12, subsections (c) through (i). Should any property owner do anything in conflict with paragraphs 12 through 17 herein, the Owners 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 Benefited Property shall comply with all terms of the Easement set forth in Part II herein.

8. The Owners 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 Owners 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 Owners. 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. Grantor hereby agrees and consents on behalf of itself and all successors and assigns of the Benefited Property to assessment of the costs of maintaining, reconstructing, repairing, grading or dredging the Easement Area and Storm Water Management Facility on all Benefited Property established by the Grantor pursuant to the formula set forth in paragraph 10, below. Grantor, on behalf of itself and all successors and assigns of the Benefited 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 Owners 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 each Benefited Property pursuant to the formula set forth below:

1/3 assessed to each Benefited Property

The assessments on each Benefited Property shall be immediately due and payable to the City pursuant to the terms of the Agreement and Waiver (see **Exhibit A**, 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 Owners.

11. Grantor hereby grants the Owners and 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 Grantor 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 Grantor 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 Grantor 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. Grantor covenants on behalf of the Benefited Properties and the Owners 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 Grantor, the Benefited Properties or the Owners 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 Grantor and on Grantor's successors and assigns.

Grantor does hereby covenant with the City that Grantor holds said real estate described in this Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement by Title In Fee Simple; 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.

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 13 day of May, 2019.

Kimberley Properties, Inc:

By: William B. Kimberley

Name: William B. Kimberley

Title: President

STATE OF IOWA, COUNTY OF Polk, ss:

On this 13 day of May, 2019, before me, the undersigned, a Notary Public in and for said County and State personally appeared William B. Kimberley, to me personally known, who being by me duly sworn, did say that he is President, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the **Kimberley Properties, Inc**, by it and by him voluntarily executed.



Elizabeth J. Gambrel
Notary Public in and for the State of Iowa

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

EXHIBIT A

**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 Kimberley Properties, Inc. hereinafter referenced the PROPERTY OWNERS.

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 Property 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 Property 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 Property 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 Property Owner or the Property 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 LOT 2, AUTUMN CREST PLAT 6, AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 00°13'42" WEST ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 50.74 FEET; THENCE SOUTH 89°53'58" WEST, 169.79 FEET; THENCE NORTH 06°26'56" WEST, 51.60 FEET TO THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 89°55'22" EAST ALONG SAID NORTH LINE, 175.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.20 ACRES (8,813 SQUARE FEET).

And

A PART OF LOT 1, AUTUMN CREST PLAT 7, AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89°55'22" WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 375.74 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 0°26'23" WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET; THENCE NORTH 86°16'29" EAST, 376.99 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 0°13'42" WEST ALONG SAID EAST LINE, 55.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.37 ACRES (15,978 SQUARE FEET).

and applies to the property described as:

Lots 1 and 2 in Autumn Crest Plat 6, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

And

Lots 1 in Autumn Crest Plat 7, 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 Property 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 Property Owner or its successors and assigns pursuant to the formula established in 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 Property 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 Property 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 Property 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 Property 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 Property Owners retain the right to request of the City a review of the mathematical calculations made to ensure their accuracy.
7. Property 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 Property Owners or any of them. Any such Resolution may contain recitals that said actions are ordered or made by the Council without petition of Property Owners, without in any way qualifying this Agreement or releasing the Property Owners from their obligation to pay the assessments levied against their property for the cost of said action.
8. Each Property 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 Property 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 Property 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.

PROPERTY OWNER NAME: Kimberley Properties, Inc.

By _____

Name _____

Date _____

Witness _____

Name _____