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New Dice: \$39.00

Carol "Cindy" Hol, Recorder
Dallas County IOWA

RETURN TO:
CITY OF WAUKEE
REBECCA SCHUETT,
DEPUTY CITY CLERK
230 W. HICKMAN ROAD
WAUKEE, IA 50263

Prepared by: Gregory A. Skinner, ISBA AT0007257 514 SW Irvinedale Dr., Ankeny, IA 50023 (515) 964-3121

**PARKVIEW CROSSING PLAT 8 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 Jerry's Homes, Inc. ("Grantor") and the City of Waukee, Iowa ("City"), in consideration for the approval by the City of the subdivision 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 through 8 and Outlot 'Y' in Parkview Crossing Plat 8, an Official Plat located in the City of Waukee, Dallas County, Iowa.

(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 the following described property:

A drainage basin easement located in Parkview Crossing Plat 8, an Official Plat in the City of Waukee, that is more particularly described as follows:

All of Lot 'Z', Parkview Crossing Plat 8, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa

(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 Section 303.136 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 Section 303.136 of the Municipal Code of the City. In recognition of such benefit and to meet the maintenance, repair and replacement obligations of the Municipal Code of the City, Grantor has created the Parkview Crossing Plat 8 Homeowners Association, Inc. (the "Association") organized pursuant to Chapter 504 of the Code of Iowa. Every owner of a Benefitted Property hereby consents and agrees to be a member of the Association pursuant to the covenants and obligations of this Agreement and by virtue of their ownership of a portion of the Benefitted Property.
- 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 Section 303.136 of the Municipal Code of the City. Grantor's obligations under this Agreement may not and shall not be transferred to the Association until the City provides written notification to Grantor that construction of the Storm Water Management Facility has been completed in accordance with the requirements of Section 303.136. Upon receipt of such notification, Grantor may transfer all obligations under this Agreement to the Association and City agrees that, without affirmative action of any kind, Grantor shall have no further duties, obligations or responsibilities pursuant to this Agreement.
- E. Grantor hereby designates, appoints (and agrees on behalf of Grantor and all successors and assigns that the Association is designated as the responsible party for replacement, reconstruction, repair, grading and maintenance of the Storm Water Management Facility. It is further covenanted and agreed that the Association shall not be dissolved, discontinued or any obligations transferred or assigned without the written consent of the City.
- F. Grantor hereby covenants and agrees that the Association is hereby designated and authorized by Grantor and all successors and assigns to accept notices and service of process for the Association and all Benefitted 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.
- G. The Association shall be responsible for maintenance, repair and replacement of the Storm Water Management Facility. Should any property owner do anything in

conflict with Paragraphs L through O herein, the Association 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.

H. The Association 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 detects noted by the inspection shall be corrected by the Association. The inspection report shall be made available to the City for review upon request and shall be kept and maintained for a period of 5 years.

I. Should the Association 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 Benefitted Property pursuant to the formula set forth below:

1/35th of the total amount shall be assessed against each Lot. See Exhibit "A" shown on the attached Exhibit "A" preliminary plat for Parkview Crossing Plat 8.

The assessments shall be assessed against each Benefitted Property and shall be a lien on each Benefitted Property and placed on the tax bill and collected as ordinary tax.

J. 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 all Benefitted Property Established by the Grantor pursuant to the formula set forth in Paragraph I above 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 Section 303.136, and any error in the allocation of such costs against the Benefitted Property in accordance with the formula identified above.

PART II - EASEMENT FOR STORM WATER MANAGEMENT FACILITY

K. Grantor hereby grants the Association and the City a Permanent Storm Water Management Facility 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.

- L. It is the obligation of the Grantor and, thereafter, the Association 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 so as not to conflict with maintenance requirements of the Association or the Association's right to perform those maintenance obligations. The maintenance obligations for the Storm Water Management Facility are as follows:
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 25% of the original design depth;
 7. All repairs shall conform to the original design;
 8. Maintain the Storm Water Management Facility to assure the effectiveness for storm water runoff for the Benefitted Properties;
- M. 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.
- N. No structure shall be erected over or within the Easement Area without obtaining the prior written approval of the City Engineer.
- O. 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.

- P. The Association, the City and their 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.
- Q. This Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement shall be deemed to run with the land and shall be binding on Grantor and Grantor's successors and assigns.

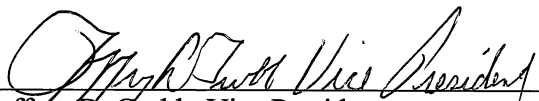
Grantor docs hereby covenant with the City that Grantor holds said real estate described in this Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement by title in fee simple subject to the records in the Dallas County, Iowa Recorder's Office; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims or 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 Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement.

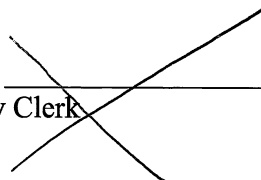
Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender according to the context.

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

CITY OF WAUKEE, IOWA

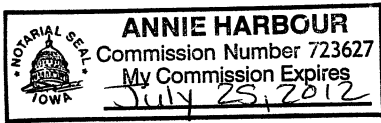

Jeffrey D. Grubb, Vice President
Jerry's Homes, Inc.

By: _____
City Clerk



STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 18 day of November, 2010, before me the undersigned, a Notary Public in and in and for said county, personally appeared Jeffrey D. Grubb, to me personally known, who being by me duly sworn did say that he is the Vice President of said corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and that the said Jeffrey D. Grubb as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.



Annie Harbaur

Notary Public in and for the State of Iowa

~~I, _____, City Clerk of the City of Waukee, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Waukee by Resolution and Roll Call No. _____ passed on the ____ day of _____, 2010 and this certificate is made pursuant to authority contained in said Resolution.~~

~~Signed this ____ day of _____, 2010.~~

~~_____
City Clerk of the City of Waukee, Iowa~~

ACCEPTANCE BY CITY OF WAUKEE, IOWA

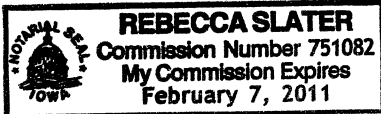
CITY OF WAUKEE, IOWA,
an Iowa municipal corporation

By: *William F. Peard*
William F. Peard,
Mayor of the City of Waukee, Iowa

By: *Jeffrey L. Kooistra*
Jeffrey L. Kooistra
City Administrator/Clerk

STATE OF IOWA)
) SS
COUNTY OF DALLAS)

On this 23 day of November, 2010, before me, the undersigned, a Notary Public in and for said County and the State of Iowa, personally appeared William F. Peard and Jeffrey L. Kooistra, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Administrator/Clerk of the City of Waukee, 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 Waukee, by it and by them voluntarily executed.



By: *Rebecca Slater*
Printed Name: Rebecca Slater
Notary Public in and for the State of Iowa