CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **January 26, 2016**

ITEM: Michael's Landing Plat 3, 9175 Booneville Road – Approval and acceptance of a Storm Water Management Facility Maintenance Agreement – FP-002738-2015

RESOLUTION: Approval and Acceptance of a Storm Water Management Facility Maintenance Agreement

FINANCIAL IMPACT: Undetermined.

BACKGROUND: Attached as Exhibit B, is a Storm Water Management Facility Maintenance Agreement for the storm water detention facilities required as part of the development of Michael's Landing Plat 3 (Case # FP-002738-2015). This agreement is for a storm water detention facility that serves the lots within Michael's Landing Plat 3. Michael's Landing Plat 3 is served by two separate detention ponds: one in the southwest corner of the development with a second off-site pond on property immediately to the east of the development. Community Business Lenders (CBL) owns the adjoining parcel and has agreed to the placement of the pond on their property. In the future, this pond will also serve as a detention facility for the CBL ground. CBL is indicating upon development of their ground that they will take over maintenance responsibilities for the facility. Until development, Michael's Landing Plat 3 property owners will be responsible for maintenance of the pond. Because maintenance responsibilities will be transferred in the future, it was determined a separate agreement that could be transferred would be a cleaner approach than attempting to remove this one pond from an agreement containing both ponds.

CITY COUNCIL SUBCOMMITTEE: Due to the fact that the City Council previously approved a Storm Water Management Facility Maintenance Agreement for this development, this item was not presented to the Development and Planning City Council Subcommittee.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt resolution approving and accepting a Storm Water Management Facility Maintenance Agreement for Michael's Landing Plat 3.

Lead Staff Member: J. Bradley Munford

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Noticing not required
Date(s) Published	
Letter sent to surrounding property owners	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed	N/A		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit A - Resolution
Exhibit B - Storm Water Management Facility Maintenance Agreement

EXHIBIT A

Prepared by: J.B. Munford, Development Services, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION APPROVING AND ACCEPTING A STORM WATER MANAGEMENT FACILITY MAINTENANCE AGREEMENT.

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve the conveyance of all property interests to the City; and

WHEREAS, the following documents conveying property interests to the City have been presented to the City for approval; and

> A STORM WATER MANAGEMENT FACILITY MAINTENANCE AGREEMENT FOR STORM WATER DETENTION FACILITIES ASSOCIATED WITH MICAHEL'S LANDING PLAT 3, GENERALLY LOCATED AT 9175 BOONEVILLE ROAD.

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT the document(s) described above conveying property interests to and from the City of West Des Moines, Iowa, are hereby approved and accepted and shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 26th day of January, 2016.

_____
Steven K Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 26, 2016 by the following vote:

ATTEST:

_____

Ryan T. Jacobson
City Clerk

EXHIBIT B

Prepared by: Richard J. Scieszinski, City Attorney for the City of West Des Moines, (515) 222-3614
Return to: City Clerk, City of West Des Moines, 4200 Mills Civic Parkway, West Des Moines, IA 50265

Project Name: Michael's Landing Plat 3
Project File #: FP-002738-2015

MICHAEL'S LANDING PLAT 3 STORM WATER MANAGEMENT FACILITY MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT FOR MULTIPLE OWNERSHIP PARCELS

THIS STORM WATER MANAGEMENT FACILITY MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT is entered into between **Community Business Lenders Service Company, LLC** and **City of West Des Moines, Iowa and KH Development, LC**, (hereinafter referred to as "Grantor") and the **City of West Des Moines, Iowa** (hereinafter referred to as "City"), in consideration for the approval by the City of West Des Moines, Iowa of the Final Plat of Michael's Landing Plat 3. (Whenever the term "Grantor" is used herein, it shall mean "Grantor and Grantor's successors and assigns" unless otherwise specifically denoted).

Grantor is obligated by the Municipal Code of the City of West Des Moines to control storm water runoff for the proposed development as a part of the Final Plat 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:

Michael's Landing Plat 3, an official plat, in the City of West Des Moines, Dallas 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 West Des Moines, 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 as detailed in the documents submitted for the Final Plat for Michael's Landing Plat 3 upon, over, under, through and across the following described property:

   A PRIVATE STORM WATER DETENTION, STORM SEWER, & OVERLAND FLOWAGE EASEMENT IN STREET LOT 'J' & OUTLOT 'S', CORRECTED MICHAEL'S LANDING PLAT 1, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 3042 AT THE DALLAS COUNTY RECORDER'S OFFICE, CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

   BEGINNING AT THE SW CORNER OF SAID STREET LOT 'J'; THENCE N00°37'41"E 205.29 FEET ALONG THE WEST LINE OF SAID STREET LOT 'J', SAID WEST LINE ALSO BEING THE EAST LINE OF MICHAEL'S LANDING PLAT 3, AN OFFICIAL PLAT, IN THE CITY OF WEST DES MOINES TO A POINT; THENCE S67°53'01"E, 46.74 FEET TO A POINT; THENCE N82°23'35"E,

360.76 FEET TO A POINT; THENCE S00°31'04"E, 181.82 FEET TO A POINT ON THE SOUTH LINE OF SAID OUTLOT 'S', SAID SOUTH LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF BOONEVILLE ROAD AS IT IS PRESENTLY ESTABLISHED; THENCE S82°23'35"W, 405.06 FEET ALONG SAID SOUTH LINE AND SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING AND CONTAINING 1.68 ACRES.
(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 be in compliance with the Storm Water Management Plan now on file with the City of West Des Moines and which is available for public inspection. 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 West Des Moines, 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 Post-Construction Storm Water Management Ordinance of the Municipal Code of the City of West Des Moines, Iowa and the Subdivision Design requirements of Section 10-3-1 or succeeding legislation of the Municipal Code of the City of West Des Moines, Iowa. In recognition of such benefit and to meet the maintenance, repair and replacement obligations of the Municipal Code of the City of West Des Moines, Iowa, Grantor has created the **Lots 11-49 in Michael's Landing Plat 3 Homeowner's Association** (hereinafter referred to as "Association") organized pursuant to Chapter 504 of the Code of Iowa. Every owner of a Benefited 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 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 standard set forth in the Post-Construction Storm Water Ordinance and Section 10-3-1 of the Municipal Code of the City of West Des Moines, Iowa. Grantor's obligations under this Agreement may not and shall not be transferred to the Association until the City provides written consent to Grantor acknowledging that construction of the Storm Water Management Facility has been completed and receiving documentation that the Storm Water Maintenance Association has been created, including the name and mailing address of the officers of said association.

5. 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 of West Des Moines.

6. 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 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. If at any time the Association fails to comply with the Agreement or is for any reason not in existence in violation of this Agreement, the owners of the Benefited Property are responsible for complying with this Agreement.

7. The Association 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 Association is 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 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 Benefited Property shall comply with all terms of the Easement set forth in Part II herein.

8. The Association 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 documented with date stamped photographs of the Storm Water Management Facility. The Association shall document such inspection by completing the Inspection Report Form available from the City of West Des Moines Public Works Department. Any deficiencies or defects noted by the inspection shall be corrected by the Association. The Inspection photographs and Inspection Report Form shall be made available to the City for review upon request 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 a Petition 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 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 Benefited Property pursuant to the formula set forth below:

Refer to the Bylaws of Lots 11-49 in Michael's Landing Plat 3 Homeowner's Association

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 Surface Water Flowage

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

11. Grantor hereby grants the Association and the City a Permanent Surface Water Flowage Easement and Storm Water Management Facility 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 Association 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 Association or the Association's 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 pursuant to the original Storm Water Management Control Plan on file with the City of West Des Moines).

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 Association, 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 Association 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 Association from complying with the requirements of this Agreement.

20. This Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement and Petition 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 day of January, 2016

Grantor: KH Development, LC

By: _____

Name: Jacob Happe

Title: Manager

STATE OF IOWA)
)**SS**
COUNTY OF Dallas)

On this _____day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Jacob Happe, to me personally known, who being by me duly sworn, did say that he is 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.

_____
Notary Public in and for the State of Iowa

Grantor: Community Business Lenders Service Company, LLC

By: _____

Name: _____

Title: _____

STATE OF IOWA)
)SS
COUNTY OF Dallas)

On this _____day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____, executing the within and foregoing instrument and acknowledged that he/she executed the same as his voluntary act and deed of the Limited Liability Company, by it and by him/her voluntarily executed.

_____
Notary Public in and for the State of Iowa

Lots 11-49 in Michael's Landing Plat 3 Homeowner's Association

By: _____

Name: Jacob Happe

Title: Manager

STATE OF IOWA)
)SS
COUNTY OF Dallas)

On this _____day of _____, 2016, before me, the undersigned, a Notary Public in and for said County and State personally appeared Jacob Happe, to me personally known, who being by me duly sworn, did say that he is the Manager, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of Lots 11-49 in Michael's Landing Plat 3 Homeowner's Association, by it and by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of West Des Moines by Resolution and Roll Call No. _____, passed on the _____ day of _____, 2016, and this certificate is made pursuant to authority contained in said Resolution.

Signed this _____ day of _____, 2016.

Ryan T. Jacobson, CMC, MPA
City Clerk of the City of West Des Moines, Iowa

EXHIBIT A

AGREEMENT AND WAIVER
POST CONSTRUCTION STORM WATER MANAGEMENT

THIS AGREEMENT made and entered into by and between the City of West Des Moines, Iowa, hereinafter referenced the CITY, and KH Development, LLC, 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, consistent with its Comprehensive Plan, adopted in September 2010, as amended, and in accordance with Iowa Code Chapter 354, Platting, Division and Subdivision of Land; and

WHEREAS, pursuant to U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program ("Program") administered by the Iowa Department of Natural Resources ("IDNR"), the City is required to obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4); and

WHEREAS, as a condition of the City's MS4 Permit, the City is obliged to develop, implement, and enforce a program to address storm water runoff from new construction and reconstruction projects for which State NPDES General Permit #2 storm water permit coverage is required; and

WHEREAS, the Property Owner, as the developer and/or owner of a construction or reconstruction project in the City of West Des Moines, 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 an Offsite 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 Offsite Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement located on:

> A PRIVATE STORM WATER DETENTION, STORM SEWER, & OVERLAND FLOWAGE EASEMENT IN STREET LOT 'J' & OUTLOT 'S', CORRECTED MICHAEL'S LANDING PLAT 1, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 3042 AT THE DALLAS COUNTY RECORDER'S OFFICE, CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:
>
> BEGINNING AT THE SW CORNER OF SAID STREET LOT 'J'; THENCE N00°37'41"E 205.29 FEET ALONG THE WEST LINE OF SAID STREET LOT 'J', SAID WEST LINE ALSO BEING THE EAST LINE OF MICHAEL'S LANDING PLAT 3, AN OFFICIAL PLAT, IN THE CITY OF WEST DES MOINES TO A POINT; THENCE S67°53'01"E, 46.74 FEET TO A POINT; THENCE N82°23'35"E, 360.76 FEET TO A POINT; THENCE S00°31'04"E, 181.82 FEET TO A POINT ON THE SOUTH LINE OF SAID OUTLOT 'S', SAID SOUTH LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF BOONEVILLE ROAD AS IT IS PRESENTLY ESTABLISHED; THENCE S82°23'35"W, 405.06 FEET ALONG SAID SOUTH LINE AND SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING AND CONTAINING 1.68 ACRES.

and applies to the property described as:

> Michael's Landing Plat 3, an official plat, in the City of West Des Moines, Dallas 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 Offsite 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 Offsite 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 West Des Moines 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.

Description of Property: Michael's Landing Plat 3, an official plat, in the City of West Des Moines, Dallas County, Iowa.

PROPERTY OWNER NAME: KH Development, LC

By _____

Name _____ Title _____

Date _____

Witness _____

Name _____

LIENHOLDER'S NAME: Central Bank

By _____

Name _____ Title _____

Date _____

Witness _____

Name _____