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 Polk County Iowa
 JULIE M. HAGGERTY RECORDER
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RETURN TO:
 Prepared by/Return to: Larry J. Handley, 2575 N. Ankeny Blvd., Suite 221, Ankeny, IA 50023
 Taxpayer: No change *515 965-1200*
 Title of Document: Storm Water Management Facilities Maintenance Covenant and Permanent Easement Agreement
 Grantor/Grantee: D.R.A. Properties, L.C./Albaugh Industrial Park 10 Owners Association
 Legal Description: Benefitted Property described on this page below
 Easement Areas described on Page 2

STORMWATER MANAGEMENT FACILITIES MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT

THIS STORMWATER MANAGEMENT FACILITIES MAINTENANCE COVENANT AND PERMANENT EASEMENT AGREEMENT is entered into between **D.R.A. Properties, L.C.** ("Grantor") and **Albaugh Industrial Park 10 Owners Association (Grantee)**, in consideration of the approval by Polk County of the SUBDIVISION PLAT to be known as "Albaugh Industrial Park, Plat 10" for the Benefitted Property identified below. Grantor is obligated by agreement with Polk County to control stormwater runoff for the proposed development as a part of the Subdivision process. In consideration for the County's approval of the Grantor's Subdivision, the parties have entered into this Stormwater Management Facilities Maintenance Covenant and Permanent Easement Agreement (this "Agreement") to control and address stormwater runoff for the following described property (hereinafter referred to as the "**Benefitted Property**").

Lots 3, 4, 5, 6, 7, 8, 10 and 11, Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa.

The following provisions are covenants running with the land to the benefit of Polk County, Iowa, binding on Grantor and Grantor's heirs, tenants, successors and assigns in interest to the Benefitted Property, and shall only be amended or released with the written permission of the County.

PART I - COVENANTS ON THE BENEFITTED PROPERTY

1. Description of Easement Areas. Grantor and Grantee hereby agree that the storm water runoff for the Benefitted Property shall be controlled through installation, construction and maintenance

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of storm sewers, stormwater detention and/or retention basins, grass and/or bioretention swales, and riparian buffers (hereinafter collectively referred to as the Stormwater Management Facilities) upon, over, under, through and across the following described property:

Storm Sewer Easement Area:

Outlot X, Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa.

Stormwater Detention and/or Retention Basin Easement Area:

Outlot X, Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa.

Grass and/or Bioretention Swale Easement Area:

Outlot X, Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa.

Riparian Buffer Easement Area:

Outlot X, Albaugh Industrial Park, Plat 10, an Official Plat now included in and forming a part of Polk County, Iowa.

The Storm Sewer Easement Area, Stormwater Detention and/or Retention Basin Easement Area, Grass and Bioretention Swale Easement Area, and Riparian Buffer Easement Area are hereinafter collectively referred to as the "Easement Area".

1. Purpose of the Stormwater Management Agreement. It is hereby agreed and covenanted that the Benefitted Property receives benefit from the Stormwater Management Facilities by controlling runoff from the Benefitted Property to meet the requirements of the County's Policy on Stormwater Runoff Control. In recognition of such benefit and to meet the maintenance, repair and replacement obligations Grantor does hereby pledge that every owner and/or tenant of a portion of the Benefitted Property will be required at the time of acquisition or execution of a lease agreement to consent and agree to be obligated pursuant to the covenants and obligations of this Agreement and by virtue of their ownership/tenant capacity of a portion of the Benefitted Property. The owners/tenants of the Benefitted Property shall be bound to the responsibility of complying with all covenants, obligations and responsibilities under this Agreement or their obligation to pay any special assessment levied against the Benefitted Property pursuant to paragraph 5 of this Agreement.

2. Stormwater Management Plan.

a. The Stormwater Management Facilities required to serve the Benefitted Property shall be designed, constructed and maintained to meet the stormwater runoff control requirements of Polk County, Iowa, as of the date of this Agreement. Grantor covenants and agrees to design, construct and maintain the Stormwater Management Facilities in compliance

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with the approved plans and specifications for the Benefitted Property and Easement Areas now on file and available for public inspection in the office of the Polk County Engineer/Planning and Development Department (hereinafter collectively referred to as the "Stormwater Management Plan").

Portions of the Stormwater Management Plan are summarized in Exhibit "A" attached hereto for convenience of reference.

b. Subject to the prior written approval by Polk County, the Stormwater Management Plan may be amended by Grantor or the Grantee, subject to the provisions of the Articles of Incorporation of the Grantee/Association.

3. Transfer of Grantor's Obligations. It is hereby agreed that Grantor and/or Grantee shall construct and install the Stormwater Management Facilities in substantial compliance with the Stormwater Management Plan. Grantor's obligations under this Agreement may not and shall not be transferred to Grantor's or Grantee's successors and assigns in ownership of the Benefitted Property until Polk County provides written acknowledgment to Grantor in substantial compliance with the Stormwater Management Plan. To be in substantial compliance the Stormwater Control Facility must satisfy the stormwater runoff control requirements of Polk County, Iowa. Such acknowledgment of completion shall be provided to Grantor by Polk County in a recordable form. Grantor may cause the acknowledgment to be recorded, and upon such recording Grantor shall have no further obligation as the Grantor under this Agreement (but shall be subject only to those obligations imposed upon any owner of the Benefitted Property).

Grantor hereby designates, appoints and agrees on behalf of Grantor and all successors and assigns that the Grantor is designated as the responsible party, on behalf of the Grantee and Owners of the Benefitted Property, for replacement, reconstruction, repair, grading and maintenance of the Stormwater Management Facilities, excepting only those duties specifically delegated in section 7, below, to the individual owners of land containing a portion of the Easement Areas. Grantor is the responsible party until Polk County provides written acknowledgment to Grantor that the Stormwater Management Facilities have been completed by Grantor in substantial compliance with the Stormwater Management Plan.

4. Annual Inspections. The Grantor shall inspect the Stormwater Management Facilities on an annual basis. The inspection shall include inspecting the Easement Areas and Stormwater Management Facilities, including but not limited to all pipes, inlets, outlets and basins, for defects, obstructions and changes from the Stormwater Management Plan. The Grantor or the Grantee shall document such inspection by completing the Inspection Report Form available from Polk County and attaching thereto date stamped photographs of the Stormwater Management Facilities. Any deficiencies or defects noted by the inspection shall be corrected by the Grantor as provided in Section 7, below. The Inspection Report Form and photographs shall be made available to the County for review upon request and shall be kept and maintained for a period of 5 years.

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5. Failure to Maintain. A. Grantor acknowledges and agrees, on behalf of Grantor and Grantor's successors and assigns in ownership of the Benefitted Property, that if the Stormwater Management Facilities are not maintained in substantial compliance with the Stormwater Management Plan, the Stormwater Management Facilities will not serve their intended purpose of controlling the quantity and quality of stormwater runoff from the Benefitted Property, and will constitute a nuisance detrimental to the public health and safety.

B. The Owners/Tenants of each lot or parcel containing a portion of the Easement Areas identified above shall abate any nuisance arising from any failure by such owners to maintain the portion of the Easement Areas owned/occupied by such owners/tenants as provided in Section 7, below. If the Grantee or Owners/Tenants fail to abate any such nuisance upon their property by performing those obligations imposed upon the property owner by Section 7, below, within a reasonable time after receipt of notice from Grantor, Grantor may cause such work to be done to abate the nuisance, and assess the reasonable and necessary costs of such work, including the cost of materials and equipment, as a special assessment upon the lot or parcel owned by such owners or occupied by tenants.

C. The Grantee and Owners/Tenants shall abate any nuisance arising from any failure to maintain and repair the Stormwater Management Facilities as provided in Section 8, below. If the Grantee or the Owners/Tenants of the Benefitted Property, fail to abate any such nuisance by repairing, reconstruction, grading, dredging and replanting the Stormwater Management Facilities as necessary to restore such facilities into substantial compliance with the Stormwater Management Plat within a reasonable time after receipt of notice from the Grantor, the Grantor may cause such work to be done to abate the nuisance, and assess the reasonable and necessary costs of such work, including the cost of the materials and equipment, as a special assessment upon the Benefitted Property pursuant to the formula set forth below:

[Grantor may propose an alternate formula, but the following formula shall be applied in the absence of unusual circumstances:

The total reasonable and necessary costs of any corrective action taken by the County to restore the Stormwater Management Facilities to compliance with the Stormwater Management Plat shall be allocated in equal shares against each of the platted lots within the Benefitted Property (exclusive of streets and other lots dedicated to the County for public use).

The share allocated to each lot within the Benefitted Property shall be assessed against the lot as a special assessment and shall be a lien on the property, billed and collected as ordinary taxes.

D. Grantor and Grantee hereby agree and consent on behalf of itself and all Owners/Tenants of the Benefitted Property to assessment of the costs of maintaining

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Management Facilities in the manner set forth in this Section, and further waives any right to appeal such assessment, excepting the correction of any errors in the calculation of the reasonable and necessary costs incurred to maintain and restore the Stormwater Management Facilities into substantial compliance with the Stormwater Management Plan, and any errors in the allocation of such costs against the Benefitted Property in the manner set forth above.

PART II - Easement for Stormwater Management Facilities

6. Grant of Easement. Grantor and Grantee hereby approve a Permanent Stormwater Management Easement under, over, through and across the Easement Areas described above for the purpose of constructing, reconstructing, repairing, grading and maintaining the Stormwater Management Facilities and the surface of the Easement Area in substantial compliance with the Stormwater Management Plan.

7. Duties of Individual Owners of Easement Areas. Grantor and the Grantee for all subsequent Owners/Tenants of a lot or parcel containing any portion of the Easement Areas described above, shall be responsible for the following within the portion of the Easement Area within their property:

Affirmative Covenants:

- a. Removal all trash, litter, debris or obstructions to the flow of water in the Easement Area and any inlets or outlets located within the Easement Area.
- b. Routine mowing or any portions of the Easement Area designated on the Stormwater Management Plan to be maintained with turf grass.
- c. Removal of weeds throughout the growing season to maintain the effectiveness of the Stormwater Management Facility.
- d. Planting and maintenance of the vegetation within the Easement Area in conformance with the Stormwater Management Plan. If any vegetation dies, it shall be replaced with vegetation in conformance with the Plan as soon as the weather permits.

Negative Covenants:

- e. No chemicals or substances shall be applied to the Easement Area that shall harm or impair the effectiveness of the Stormwater Management Facilities.
- f. No trees and shrubs shall be planted or allowed to grow within the Easement Area, other than plantings required by the Stormwater Management Plan.
- g. No portion of the Stormwater Management Facilities shall be altered or removed without the prior written approval of the County Engineer.
- h. No structure shall be erected on, over or within an Easement Area without the prior written approval of the County Engineer.
- i. No change shall be made to the grade, elevation or contour of any part of the Easement Area without obtaining the prior written approval of the County Engineer.

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- j. No structure, material, device, thing or matter which could reasonably be expected to 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 County Engineer.
- k. The Easement Areas shall not be used as a composite site, or for the disposal of yard wastes or other materials.

8. Duties of the Grantor, Successors, Assigns or Tenants. From and after completion of the Stormwater Management Facilities in substantial compliance with the Stormwater Management Plan, the Grantor, Owners or Tenants shall maintain the Easement Areas and the Stormwater Management Facilities as follows:

- A. Inspections. Annually inspect all Easement Areas and Stormwater Management Facilities serving the Benefited Property as more specifically provided in Section 4, above.
- B. General. Shall not take any action prohibited by the negative Covenants in paragraphs d through k of Section 7, above.
- C. Storm Sewer Easement Area: Shall be responsible for the following within any Stormsewer Easement Area:
 - a. Repair and replace the storm sewer line and appurtenant facilities as necessary to maintain the storm sewer line and appurtenant facilities in substantial compliance with the Stormwater Management Plan.
- D. Stormwater Detention and/or Retention Basin Easement Area: Shall be responsible for the following within any Stormwater Detention or Retention Basin Easement Area:
 - a. Grade, repair and replace the basin and appurtenant facilities as necessary to maintain the basin and appurtenant facilities in substantial compliance with the Stormwater Management Plan.
 - b. If at any time the capacity of the basin shall be reduced below the minimum required volume established in the Stormwater Management Plan for such basin, shall cause the basin to be re-graded or excavated to restore the volume of the basin to its original design capacity.
 - c. Tile the soil at the bottom of the riparian buffer if it does not drain out within

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the time established in the Stormwater Management Plan, and replant vegetation as designated in the Plan.

- E. Grass and/or Bioretention Swale Easement Area: Shall be responsible for the following within any Grass and/or Bioretention Swale Easement Area:
 - a. Grade, repair and replace the swale and appurtenant facilities as necessary to maintain the swale and appurtenant facilities in substantial compliance with the Stormwater Management Plan.
 - b. Mow on a semi-annual basis to maintain the vegetation (other than any turf grass to be maintained by the individual property owner pursuant to Section 7, above) at the height designated in the Stormwater Management Plan.
 - c. Tile the soil at the bottom of the swale if the grass swale does not drain out within the time established in Stormwater Management Plan and replant vegetation as designated on the Plan.

- F. Riparian Buffer Easement Area: Shall be responsible for the following within and Riparian Buffer Easement Area:
 - a. Grade, repair and replace the riparian buffer and appurtenant facilities as necessary to maintain the Riparian Buffer and appurtenant facilities in substantial conformance with the Stormwater Management Plan.
 - b. Mow on a semi-annual basis to maintain the vegetation (other than any turf grass to be maintained by the individual property owner pursuant to Section 7, above) at the height designated in the Stormwater Management Plan.

9. Access to Easement Areas. The Grantor, Grantee 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 benefit 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 as determined to be necessary to restore the Stormwater Management Facilities to substantial compliance with the Stormwater Management Plan.

10. Application to County. Nothing in this Agreement shall be construed to impose an obligation upon the County to maintain the Easement Areas or the Stormwater Management Facilities.

11. Successor's and Assigns. This Agreement shall be deemed to run with the land and shall be binding on Grantor and the Association and their respective successors and assigns.

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Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Stormwater Management Facilities 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.

D.R.A. Properties, L.C., GRANTOR

BY: Tara Meredith 11/25/2019
Authorized Signature Date

ALBAUGH INDUSTRIAL PARK 10 OWNERS ASSOCIATION, GRANTEE

BY: Tara Meredith 11/25/2019
Authorized Signature Date

STATE OF IOWA)
)
COUNTY OF POLK) ss.

On this 25 day of November, 2019, before me, the undersigned, a Notary Public in the State of Iowa, appeared Tara Meredith to me personally known, and who being by me duly sworn signed on behalf of D.R.A. Properties, L.C., and acknowledged the execution of the instrument to be the voluntary act and deed of D.R.A. Properties. L.C. and by it and by them voluntarily executed.

Kelly Wing
Notary Public in the State of Iowa
My commission expires: 4/16/21



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STATE OF IOWA)
)
COUNTY OF POLK) ss.

On this 25 day of November, 2019, before me, the undersigned, a Notary Public in the State of Iowa, appeared Jana Meredith to me personally known, and who being by me duly sworn signed on behalf of ALBAUGH INDUSTRIAL PARK 10 OWNERS ASSOCIATION and acknowledged the execution of the instrument to be the voluntary act and deed of ALBAUGH INDUSTRIAL PARK 10 OWNERS ASSOCIATION and by it and by them voluntarily executed.

Kelly Wing

Notary Public in the State of Iowa
My commission expires: 4/16/21

