GIBB ENGINEERING

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DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

Preparer: Laura K. Thomas, City of Manchester, 208 E. Main Street, Manchester, Delaware Co., Iowa 52057, 563 927-3636
Return to: City of Manchester, 208 E Main Street, Manchester, Delaware Co., Iowa 52057, 563-927-3636
Taxpayer: Donald L. McCurdy & Kathy S. McCurdy, P.O. Box 104, Coggon, IA 52218, 319-435-2416

MEMORANDUM OF AGREEMENT

In this memorandum of agreement, the City of Manchester, Delaware County, Iowa will be known as the "City"; and Donald L. McCurdy and Kathy S. McCurdy, will be known as the "Developer".

WHEREAS, Section 127.07 of the Municipal Code of the City of Manchester, Delaware County, Iowa requires the developer of new subdivisions located within the City to construct, or give satisfactory assurance to the City that it will construct certain improvements; and,

WHEREAS, the Developer, above described, is now in the process of subdividing the premises legally described as follows to wit:

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See ATTACHMENT A

which subdivision shall be known as Honey Creek Addition in the City of Manchester, Delaware County, Iowa.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Developer has constructed all public improvements or has provided a suitable guarantee for the assurance of these improvements and all such improvements have been constructed to City Standards inspected by the City Staff and Accepted by the City Council.

2. Developer will either construct, or cause to be constructed, within said subdivision all sidewalks required by Section 127.09(5) of the Code of Ordinances as follows:

   a. That said sidewalk shall be constructed to meet City specifications adjacent along the east side of North Second Street and along the north side of Winslow Drive in the subdivision as part of the construction of a principal structure on Lot 5. ***Sidewalk construction shall be completed upon expiration of the building permit (one year from date of issuance) of the principal structure or upon final building inspection of the principal structure, whichever occurs first.***

   b. In addition, notwithstanding the above, the Developer agrees to construct sidewalk adjacent to any lot which has not had sidewalk constructed for which the City Council passes a resolution of necessity within a period of time established within said resolution of necessity.

3. All installations shall be constructed to City standards and shall be inspected by City Building Inspector.

4. If the Developer fails to perform any requirements of this agreement, the City may at its election take action consistent with the petition, contract and waiver for construction (Attachment B) provided by the Developer and/or undertake to perform the requirements. The Developer agrees to pay the City for all the costs associated with the City performing the requirement, including an administrative fee in the amount of 10% of the actual cost of constructing the sidewalk.

5. That all costs and materials and construction thereof shall be at the expense of the Developer.

6. Developer agrees to assume all expenses for any damage to public utilities, public improvements or other property and assumes all risk of loss to the improvements contemplated by this agreement until final acceptance by the City.

7. Developer agrees to hold the City harmless and to indemnify the City against all claims made by any person as a result of personal injury or property damage occurring during the construction of the sidewalks

by the Developer that are contemplated by this agreement.

8. The promises, obligations and covenants contained herein shall run with the real property described on Attachment A hereto, and shall be binding upon the parties hereto and their heirs, successors and assigns, and the sale by the Developers of all or any part of such real property shall transfer the obligations of the Developer to their successor(s) in interest. This Memorandum of Agreement, together with Attachment B hereto, shall be recorded in the office of the Delaware County Recorder and thereby be placed on the real estate records. Prior to completing the sale, transfer or conveyance of any of the real property, the Developer shall acquire from the proposed successor in interest a written and signed statement acknowledging that their taking of an interest in said real property is subject to the obligations, promises and covenants contained herein and in the Petition, Contract and Waiver attached hereto as Attachment B.

9. That the Developer agrees to comply with and fulfill all requirements of Chapter 127 (Subdivision Ordinance) and Chapter 123 (Zoning Ordinance) of the Code of Ordinances of the City of Manchester.

10. Should any ambiguities arise in the construction of this agreement, it is agreed that it shall be construed to favor public over private interests.

11. Attached hereto marked Attachment "B" and by this reference made a part hereof is a Petition, Contract and Waiver for Construction of Sidewalks. The City is authorized to rely upon the terms of this instrument when sidewalks are constructed as set forth above. Attachment "B" is given to provide for the orderly construction and payment of costs for the construction of sidewalks as provided for herein.

Property Owners agree that this Agreement shall be effective and binding from and after the approval hereof by resolution of the City Council.

Dated this 13 day of March, 2007.

Presented to the City Council on March 12, 2007.

Approved by the City Council on March 12, 2007.

Milt L. Kramer, Mayor

Erin Rempe, City Clerk

By: Donald L. McCurdy
Donald L. McCurdy

By Kathy S. McCurdy
Kathy S. McCurdy

Date: March 12th, 2007

DEVELOPER NOTARY

STATE OF IOWA, COUNTY OF DELAWARE, SS:

On this 12th day of March A.D. 2007, before me a Notary Public in and for said State, personally appeared Donald L. McCurdy and Kathy S. McCurdy to me personally known, who being by me duly sworn, to me known to be the person(s) named and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Commission Number 176397
My Commission Expires
8-16-09

Notary Public in and for the State of Iowa

BY: Milt L. Kramer
Milt L. Kramer, Mayor

BY:
Erin Rempe, City Clerk

STATE OF IOWA, COUNTY OF DELAWARE, SS:

On this 13 day of March, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Milt L. Kramer and Erin Rempe, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Manchester, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in R-035-2007 passed (the Resolution adopted) by the City council, under roll Call No. 22a of the City Council on the 12th day of March, 2007, and that Milt L. Kramer and Erin Rempe acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

LAURA K. THOMAS
Commission Number 718135
My Commission Expires

Laura K. Thomas
Notary Public in and for the State of Iowa

LAURA K. THOMAS
Commission Number 718135
My Commission Expires
8-20-08

ATTACHMENT A

LEGAL DESCRIPTION:

HONEY CREEK ADDITION, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION TWENTY (20), TOWNSHIP EIGHTY-NINE NORTH (T89N), RANGE FIVE WEST (R5W) OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF MANCHESTER, DELAWARE COUNTY, IOWA, containing a total of 9.65 acres, divided into six lots numbered Lot 1 through Lot 6, Honey Creek Drive, North Franklin Street, and Winslow Drive, subject to easements of record, and more particularly described by metes and bounds as follows;

COMMENCING at the Center of Section Twenty (20), Township Eighty-nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa;

THENCE along the Northerly Line of the Southeast Quarter (SE ¼) of said Section Twenty (20), South 89° 20' 01" East, to the Northeast Corner of Lot A of Swiss Valley Farms Subdivision, as recorded in Book 2004, Page 1563 in the Office of the Delaware County Recorder, 293.83 feet, the POINT OF BEGINNING;

THENCE continuing along the Northerly Line of the Southeast Quarter (SE ¼) of said Section Twenty (20), South 89° 20' 01" East, to the centerline of Iowa State Highway #13, 246.27 feet;

THENCE along the centerline of said Iowa State Highway #13 along a circular curve concave Southwesterly and having an arc length of 723.62 feet, a radius of 1145.92 feet, a central angle of 36° 10' 50", chord length of 711.65 feet, and a chord bearing of South 15° 40' 44" East;

THENCE continuing along the centerline of Iowa State Highway #13, South 02%%D 24' 41" West, to the Northerly Line of a parcel as deeded in L.D. Book 129, Page 7 in the Office of the Delaware County Recorder, 198.68 feet;

THENCE along the Northerly Line of said deeded parcel, South 89° 14' 40" West, to the Easterly Line of Lot 2 of said Swiss Valley Farms Subdivision, 513.96 feet;

THENCE along the Easterly Line of said Lot 2 along a circular curve concave Easterly and having an arc length of 906.18 feet, a radius of 1860.07 feet, a central angle of 27° 54' 47", a chord length of 897.24 feet, and a chord bearing of North 05° 21' 11" East to the POINT OF BEGINNING;

Containing a total of 9.65 acres, divided into six lots numbered Lot 1 through Lot 6, Honey Creek Drive, North Franklin Street, and Winslow Drive, and subject to easements of record.

The Northerly Line of the Southeast Quarter (SE ¼) of Section Twenty (20), Township Eighty-nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa is assumed to bear South 89° 20' 01" East.

ATTACHMENT B
PETITION, CONTRACT AND WAIVER FOR CONSTRUCTION OF SIDEWALKS IN THE HONEY CREEK ADDITION

THIS AGREEMENT made and entered into by and between the City of Manchester, Iowa (hereinafter referred to as the "City"), and the undersigned property owners (hereinafter referred to as the "Property Owners") and the undersigned lienholders (hereinafter referred to as the "Lienholders") who hold liens on certain property of the Property Owners.

WHEREAS, the Property Owners are respectively the owners of the tracts of real estate comprising the proposed subdivision known as **HONEY CREEK SUBDIVISION,** to the City of Manchester, Delaware County, Iowa; and,

WHEREAS, the undersigned Property Owners desire the construction of sidewalks; and,

WHEREAS, such construction is a requirement for development of said subdivision and will, therefore, specifically benefit the respective property of the Property Owners; and,

WHEREAS, the City has the power to accomplish such Project and assess the cost thereof to the Property Owners pursuant to Chapter 384 of the Code of Iowa; and,

NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

The Property Owners, City and Lienholders, by execution of this Agreement, agree that this Agreement shall constitute a written contract and petition as required by Section 384.41 of the Code of Iowa, for initiation of a plan for sidewalk construction to be paid in whole or in part by special assessments to be levied against the below listed properties of the Property Owners.

FURTHER, the City, by execution of this Agreement, agrees to take any and all action required by Chapter 384 of the Code of Iowa, or any and all other actions required by law to be taken in order to complete the sidewalk construction unless the sidewalk construction has been completed and accepted by the City. Upon acceptance of the sidewalk improvements included in the Project, this petition, contract and waiver shall be considered as completed and shall have no further effect.

FURTHER, each of the Property Owners, by execution of this Agreement:

1. Waive notice to Property Owners by publication and mailing as provided by Section 384.50 of the Code of Iowa (relating to notice of hearing at which the owners of property to be assessed or the interested parties may appear and be heard for or against the making of the improvement, the boundaries of the district, the cost, the valuation of any lot, the assessment against any lot, or the final adoption of the resolution of necessity.)

2. Waive the right to a hearing on the proposed resolution of necessity as provided for in Section 384.51 of the Code of Iowa.

3. Consent to the adoption of a preliminary resolution, a plat, scheduled and cost estimate, and resolution of necessity by the City for the construction of sidewalks.

4. Waive any objections to the sidewalk construction, the boundaries of the district, the costs of the sidewalk construction, the valuation of any lot, the assessment against any lot, or the final adoption of the resolution of necessity.

5. Agree that the amount and proportion of the cost of the construction or repair of the above described improvement, as ascertained and determined by the City Council of the City and as may be set forth in the Final Schedule of Assessments, which will be prepared upon completion of the public improvement, shall constitute assessments against the respective properties listed below and that

said assessments shall be paid by the undersigned Property Owners within the time provided by law for the payment of special assessments for such improvements.

6. Waive the limitations provided in Section 384.62 of the Code of Iowa, that an assessment may not exceed twenty-five percent (25%) of the value of the property assessed.

7. Agree that the City may charge the Property Owners, and the Property Owners shall pay to the City, an amount which the City determines to be necessary to cover administrative expenses incurred by the City in connection with the sidewalk construction, such sum to be divided and charged to the Property Owners in equal shares, the aggregate total of which shall not exceed ten percent (10%) of the cost of improvements.

8. Waive the notice to Property Owners by publication and mailing as provided by Section 384.60 of the Code of Iowa (relating to notice of certification to County Treasurer of final schedule of assessments).

9. Waive the right to request a deferment of assessment installment payments for any property used and assessed as agricultural property.

10. Waive any claim or cause of action against the City for any delay in the construction or completion of the sidewalk's construction.

11. Warrant that the real estate, as described below, is free and clear of all liens and encumbrances, other than ordinary taxes, except for such liens as are held by the Lienholders hereinafter listed and designed as signers of this Agreement.

12. Agree to subordinate the sale of any part of the property listed below to the terms of this Agreement.

FURTHER, each of the Lienholders, by execution of this Agreement, individually:

1. Agree and consent to the initiation of this public improvement as authorized by Section 384.41 of the Code of Iowa, in order that the special assessments for the cost of the sidewalk construction shall be liens on the below-listed properties to the same extent as provided in Section 384.65(5) of the Code of Iowa.

2. Agree and consent to the Lienholder's Lien or liens shall be junior and inferior to the lien of the assessment levied pursuant to this Agreement.

FURTHER, each of the parties hereto acknowledges that this Agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

Dated this 13 day of March, 2007.

CITY OF MANCHESTER

Milt L. Kramer

Milt L. Kramer, Mayor

ATTEST:

Erin Rempe, City Clerk

CITY OF MANCHESTER IOWA SEAL

OWNER

Donald L. McCurdy

Donald L. McCurdy

Kathy S. McCurdy

Kathy S. McCurdy