Use J. David Mills

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DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

⊗ & RETURN TO
Prepared by Mark A. Roeder, 119 E. Main St., Manchester, IA 52057-1736 Ph. 563-927-2782

AFFIDAVIT OF J. DAVID GIBBS

I, J. David Gibbs, being first duly sworn on oath, state of my own knowledge:

1. I am licensed in the State of Iowa as a Land Surveyor, License No. 8419.

2. On August 7, 2001, a Final Plat of Survey for Oak Park Second Subdivision that was prepared by me or under my direct personal supervision was recorded at the Delaware County Recorder at Book 2001, Page 2846.

3. Attached to said plat, is a Resolution Approving Final Plat signed on behalf of the Planning & Zoning Commission of the City of Manchester, Iowa (denominated as Sheet 5 of 8), and also attached to said plat is Resolution R-123-2001, Resolution Approving Final Plat executed on behalf of the City of Manchester by its Mayor and City Clerk (denominated as Sheet 6 of 8). Each of these resolutions refers to Exhibit A, an "Agreement and Waiver Regarding Alternative Systems for Sewer and Water and Private Streets." Through a clerical error Exhibit A was not attached to the recorded documents.

3. I have carefully searched for Exhibit A but could not locate a fully executed original of Exhibit A.

4. Exhibit A was preserved at my office in electronic form. The parties have now executed, or re-executed Exhibit A, and the attached Exhibit A contains the original terms of the Agreement and Waiver Regarding Alternative Systems for Sewer and Water and Private Streets as were contained in the Exhibit A referred to in paragraph 3 above.

5. This Affidavit and the attached Exhibit A were prepared and are being recorded to correct the clerical omission of the above-referenced Exhibit A from the Final Plat of Survey for Oak Park Second Subdivision, and associated documents that were previously recorded at Book 2001, Page 2846.

Further Affiant Sayeth Not.

DATED: MAY 8, 2007

By: _____
J. David Gibbs

STATE OF IOWA)
) ss:
DELAWARE COUNTY)

Signed and sworn to before me this 8th day of May 2007 by J. David Gibbs.

DONNA M. KUNDE
Commission Number 175597
My Commission Expires
8-16-09

By: _____
Notary Public in and
for the State of Iowa

EXHIBIT A

AGREEMENT AND WAIVER REGARDING ALTERNATIVE SYSTEMS FOR SEWER AND WATER AND PRIVATE STREETS

OAK PARK SECOND SUBDIVISION, DELAWARE COUNTY, IOWA (as amended)
BURNELL A. LYNCH AND VELMA C. LYNCH, DEVELOPERS
CITY OF MANCHESTER, IOWA

Whereas, Developers have proposed to establish a subdivision located in Delaware County, Iowa, more specifically described as:

OAK PARK SECOND SUBDIVISION, *A SUBDIVISION OF THE EAST ONE-HALF (E ½) OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHEAST QUARTER (SE ¼) AND PART OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER(SE ¼) OF SECTION SEVENTEEN (17), TOWNSHIP EIGHTY-NINE NORTH (T89N), RANGE FIVE WEST (R5W) OF THE FIFTH PRINCIPAL MERIDIAN, DELAWARE COUNTY, IOWA*

Whereas, said proposed subdivision is located outside the city limits of the City of Manchester, Iowa, but is within a two-mile radius of the city limits of the City of Manchester, Iowa, and therefore is subject to subdivision regulations for the City of Manchester, Iowa; and

Whereas, the City Council for the City of Manchester, Iowa, has reviewed the proposed subdivision, that alternative systems may be designed to protect the public health, safety, and welfare and meet requirements of State, County, or other applicable health regulations; and

Whereas, the City of Manchester, Iowa, has determined that unusual conditions exist with regard to said proposed subdivision which make a private street desirable; and

Whereas, the Developer and the City of Manchester, Iowa have executed this Agreement to provide notice to all current owners of the real estate that is subject to the proposed subdivision, and all persons or entities who may hereafter acquire an interest in said property as to the agreement set forth in this document; and

Whereas, the Developer and the City of Manchester, Iowa, have determined that all private roads which are shown on the plat which have not been constructed at this time shall be completed to serve any lot which is sold by the developers.

IT IS THEREFORE AGREED as follows:

1. The City of Manchester, Iowa, approves the use of alternate facilities for the distribution of water and the collection and disposal of sanitary waste, however, such alternative facilities must be designed to fully protect the public health, safety, and welfare and shall meet all requirements of State, County, of other applicable health regulations.

2. Approval of the subdivision by the City of Manchester, Iowa, does not constitute a finding by the City of Manchester, Iowa, that alternative water systems or alternative systems for collection and disposal of sanitary waste do in fact meet with the requirements of State, County, or other applicable health regulations. Plans and specifications for private sewage disposal facilities and private water systems shall be submitted to the City for approval prior to development of any lot to be served by such facilities. Plans shall include a location of building

sewer and water service line at the building entry points, suitable for possible future connection to public sewer and public water main. Private disposal systems or water supply systems, and costs thereof, shall be the responsibility of the property owner developing such private facility, including costs incurred by the City to review and inspect such alternate system. In the event it is determined that a public sewer is necessary to serve the above described property, it is acknowledged and agreed by the developer that the City of Manchester, Iowa, may not be required to incur expense for the subsequent installation of a sewer facility serving the above premises.

3. The purchasers of real estate contained in the proposed subdivision are hereby put on notice that the City of Manchester, Iowa, shall not be required to install sewer or water facilities serving the land set forth in the proposed subdivision.

4. The Developers shall be solely responsible for development and creation of alternative facilities for the distribution of water or collection and disposal of sanitary waste. The Developer shall further hold harmless the City of Manchester, Iowa, for any cost, liability, damage, or other injury of any kind resulting from the creation of said alternate facilities for the distribution of water or the collection and disposal of sanitary waste.

5. The proposed subdivision provides for the establishment of private streets. Streets set forth in the subdivision will not be dedicated to the City of Manchester, Iowa. All private streets shown on the plat which are not completed at the time of execution of this agreement shall be completed in a sufficient manner to service any lots sold by the Developer. Pursuant to Chapter 127.31 (6) of the Manchester City Code, the private streets referred to on the plat shall constitute a covenant running with the land for the benefit of all property in the subdivision. The construction or reconstruction of any improvements necessary to meet City standards and the assessment of all cost to property owners in the event of annexation and dedication and acceptance is hereby required. This contract shall provide notice to purchasers of lots of this obligation.

The City shall have the authority to prohibit the construction of any private street that does not comply with standards for streets in the City of Manchester, Iowa, as modified by variances duly approved by the City.

6. The City of Manchester, Iowa will not and shall not assume any obligation for maintenance, repair, construction, or other responsibility for streets shown in the proposed subdivision. Developer and all subsequent owners of property in the subdivision shall indemnify and hold harmless the City of Manchester, Iowa, for any claim or cause of action arising from inadequate maintenance, snow removal or repair of private streets.

7. The terms and conditions set forth in this Agreement shall be binding upon the Developers and other current owners of the property more specifically described in the proposed subdivision. Terms, conditions, and obligations set forth in this Agreement shall further be binding upon all heirs, assigns, devisees, or other persons acquiring land contained in the proposed subdivision and the terms of the Agreement shall further run with the land.

9. Purchasers and owners of land described in the proposed subdivision have expressly, by the creation of this Agreement, waived any right to require the City to incur any expense for subsequent installation of streets, storm sewer, sanitary sewer, sidewalks or water facilities serving the land set forth in the proposed subdivision.

10. This Agreement is executed in compliance with Manchester Code of Ordinances 1997, Section 127.12 and 127.17(15).

11. By entering into this Agreement, the City of Manchester, Iowa, does not warrant of otherwise make any expression as to the suitability or desirability of the private streets set forth in the subdivision or their manner of construction.

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

Burnell A. Lynch

Velma C. Lynch

Subscribed and sworn to before me by Burnell A. Lynch and Velma C. Lynch this 7th day of May 2007.

LINDA L. LAWSON
Commission Number 721873
My Comm. Exp. 4-10-09

Notary Public in and for the State of Iowa

CITY OF MANCHESTER, IOWA

Milt L. Kramer, Mayor

Erin Rempe, City Clerk

CITY MANCHESTER IOWA SEAL

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

On this 7th day of May 2007, before me, Julie A. Schmitz 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 the authority of its City Council, as contained in Resolution Number R-123-2001 passed by the City Council on the 6th day of August, 2001, and that Milt L. Kramer and Erin Rempe acknowledge the execution of this instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

#224151

JULIE A. SCHMITZ
Commission Number 224151
My Commission Expires
8-23-08

JULIE A. SCHMITZ
Commission Number 224151
My Commission Expires
8-23-08