

INSTRUMENT PREPARED BY:	Doug Marek, 515 Clark Ave., P.O. Box 811, Ames, IA 50010 (515) 239-5146
RETURN TO:	Doug Marek, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

**COVENANT FOR ASSESSMENT OF
COSTS OF SIDEWALK IMPROVEMENTS**

THIS COVENANT FOR ASSESSMENT OF COSTS OF SIDEWALK IMPROVEMENTS (this "Agreement") is made effective the ___ day of October, 2012, by and between **DEERY, DEERY AND DEERY, LLC**, and its successors and assigns (hereinafter collectively referred to as the "Owner"), and **THE CITY OF AMES, IOWA**, (hereinafter referred to as the "City").

WITNESSETH THAT :

The parties hereto have agreed and do agree as follows:

1. This Agreement is made for the purpose of satisfying the conditions of the waiver, granted by the Ames City Council on September 25, 2012, of the subdivision requirements to install sidewalks on the Southeast 16th Street frontage of Outlot A, Deery Subdivision, Ames, Story County, Iowa (the "Property").
2. In anticipation of the possibility that the City may at some time add a pedestrian walkway to the south side of the currently existing bridge over the Skunk River on Southeast 16th Street, and may then deem it to be in the public interest to cause construction of sidewalks along the south side of Southeast 16th Street that is contiguous to the Property by means of city awarded contracts to be paid by special assessments to be levied against the Property, the Owner does hereby covenant and agree that by execution of this Agreement, Owner shall pay and is bound to pay to the City, the costs of the aforesaid sidewalk improvements assessed to the Property, by action of the governing body for the City, after notice of hearing as provided by Section 384.50 of the Code of Iowa, the provisions of Section 384.38 of the Code of Iowa notwithstanding.
3. Without affecting the foregoing waivers of rights, it is understood and agreed that if and when the governing body of the City conducts a hearing on a proposed resolution of necessity to assess sidewalk improvement costs to the Property, the Owner may then appear before the governing body of the City and be heard.

4. Additionally, except as expressly provided herein, Owner, in consideration of the benefits derived from approval of the preliminary plat of the Property and conditional waiver of the subdivision requirement to install sidewalks, receipt of which is hereby acknowledged, does covenant with the City that it will never, at any future time, sue the City, or any officer or employee of the City, to test the regularity of the proceedings or legality of the assessment procedure, to appeal the amount of the assessment, to enjoin, set aside, overturn, or reduce the amount of such assessments levied against the Property by the City. Notwithstanding anything in this Agreement to the contrary, in the event Owner objects to the proposed amount of the assessment levied against the Property for the construction of the sidewalks adjacent to the Property as contemplated herein, Owner may, in the sole and absolute discretion of Owner, elect to construct the required sidewalks by providing written notice of such election to the City (the "Construction Election Notice"). Owner must provide the Construction Election Notice to the City Clerk: (a) no later than the date of the public hearing set for discussion and consideration of any public improvement project that includes the construction of the sidewalks adjacent to the Property; and (b) prior to any action by the City Council approving final plans and specifications and awarding the contract or contracts for any public improvement project that includes the construction of the sidewalks adjacent to the Property. The sidewalks that may be constructed by the Owner as contemplated herein shall be constructed in accordance with the applicable and then existing City rules and regulations concerning the construction of sidewalks.

5. This Agreement shall be filed for record in the office of the Story County Recorder and all covenants, agreements, promises and representations herein stated shall be deemed to be covenants running with the Property and shall endure and be binding on the parties hereto, their mortgagees, lien holders, successors and assigns, for a period of twenty-one (21) years from the date of the recording of this Agreement, unless claims to continue the interest set forth herein are filed as provided by law. The City shall have the right to file a claim to continue its interest in this Agreement.

6. Invalidation of any of provision or term of this Agreement by judgment or court order shall in no way affect any of the other provision or term herein, which shall remain in full force and effect.

The foregoing provisions encumber the real estate described as follows:

Outlot A, Deery Subdivision, Ames, Story County, Iowa

SIGNATURES ON FOLLOWING PAGE

Executed by the respective signatories effective the date first above written.

DEERY, DEERY AND DEERY, LLC, Owner

By: _____

_____,
NAME TITLE

STATE OF IOWA, _____ COUNTY, ss:

This instrument was acknowledged before me on this __ day of _____, 2012, by _____, the _____ of Deery, Deery and Deery, LLC.

Notary Public in and for the State of Iowa

THE CITY OF AMES, IOWA, City

By: _____

_____,
NAME TITLE

STATE OF IOWA, STORY COUNTY, ss:

This instrument was acknowledged before me on this __ day of _____, 2012, by _____, the _____ of The City of Ames, Iowa.

Notary Public in and for the State of Iowa