

RECORDERS OFFICE

2022-01067  
 RECORDER MARLYN HEBING  
 POTTAWATTAMIE COUNTY, IA  
 FILE TIME: 01/21/2022 10:38:39 AM  
 RECORDING FEE  
 EACH FEE

2022-01067  
 RECORDER MARLYN HEBING  
 POTTAWATTAMIE COUNTY, IA  
 FILE TIME: 01/21/2022 10:38:39 AM  
 RECORDING FEE  
 EACH FEE

AUDITOR'S OFFICE  
 THE PARCEL DESIGNATION(S) SHOWN ON THE ATTACHED PLAT OF SURVEY HAVE BEEN REVIEWED AND ACCEPTED BY THE  
 POTTAWATTAMIE COUNTY, IOWA, AUDITORS OFFICE.

MELVYN HOUSER, CO. AUDITOR  
 DATE

FINAL PLAT  
 WHISPERING OAKS PHASE III  
 LOTS 198 - 295 INCLUSIVE, OUTLOTS "A", "B", & "C"

A TRACT OF LAND BEING PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH LOT 3, OF THE AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 33 TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN AND ALSO TOGETHER WITH LOT 1, AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; ALL LOCATED IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

RECORDERS INDEX	
DATE OF SURVEY	10/12/2021
SURVEYOR	JEREMY M. BENDER
CITY	COUNCIL BLUFFS
COUNTY	POTTAWATTAMIE
LOT	
BLOCK	
SUBMISSION	TOWNSHIP: 74 RANGE: 43
ALLOT PART	NW 1/4 NW 1/4
SECTION	3 TOWNSHIP: 74 RANGE: 43
SECTION	33 TOWNSHIP: 75 RANGE: 43
SECTION	32 TOWNSHIP: 75 RANGE: 43
ALLOT PART	SE 1/4 SE 1/4
PARCEL DESIGNATION(S)	
DRAWN	JMB
CHECKED	KAS
DATE	08/01/2021



- LEGEND
- SECTION CORNERS FOUND (AS NOTED)
  - CORNERS FOUND (AS NOTED)
  - CORNERS SET (6" REBAR W/ 2023 RED CAP)
  - △ COMPUTED CORNER
  - (P) PLAT DIMENSION
  - (R) RECORD DIMENSION
  - (S) SURVEY DIMENSION

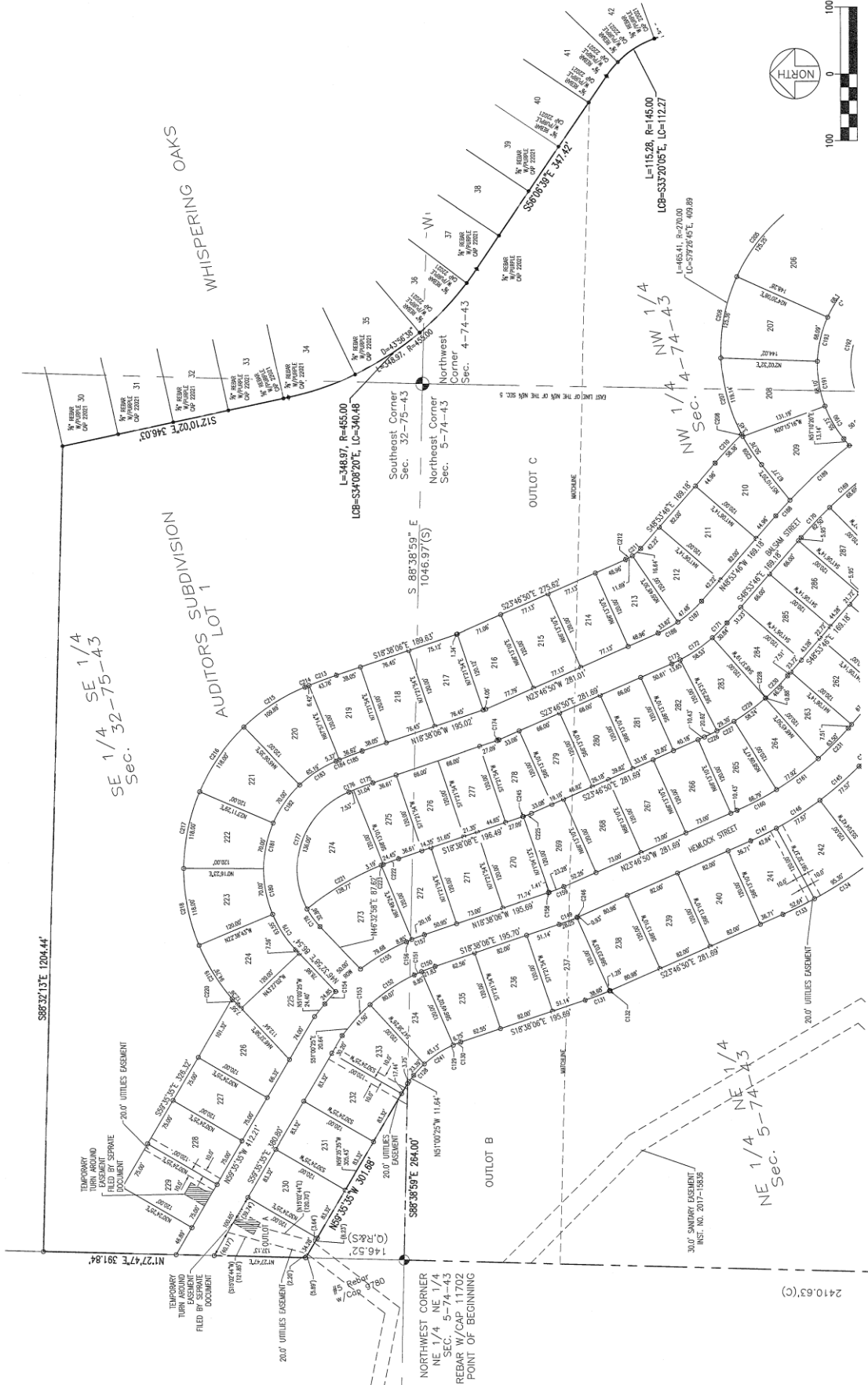
**SCHEMMER**  
 Design with Purpose. Build with Confidence.

FINAL PLAT
WHISPERING OAKS PHASE III LOTS 198-295 INCLUSIVE & OUTLOTS "A", "B" & "C" POTTAWATTAMIE COUNTY, IOWA
JOB NO. 00619.207
SHEET 1 of 5

**FINAL PLAT**

**WHISPERING OAKS PHASE III LOTS 198 - 289 INCLUSIVE & OUTLOTS "A", "B" & "C"**

A TRACT OF LAND BEING PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH LOT 3, OF THE AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH LOT 1, AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; ALL LOCATED IN THE CITY OF COUNCIL BLUFFS, POTIOWATAMIE COUNTY, IOWA.



1 inch = 100 ft.

**LEGEND**

- - SECTION CORNERS FOUND (AS NOTED)
- - CORNERS FOUND (AS NOTED)
- - CORNERS SET (5/8" REBAR W/ 20123 RED CAP)
- △ - COMPUTED CORNER
- (P) - PLAT DIMENSION
- (R) - RECORD DIMENSION
- (S) - SURVEY DIMENSION

**SCHMIDT**

*Design with Purpose. Build with Confidence.*

DATE	09/01/2023
BY	KRICK 697
CHECKED	JMB
DRAWN	KAG
DESIGNED	
DATE	10/12/2022
BY	
CHECKED	
DRAWN	
DESIGNED	
DATE	
BY	
CHECKED	
DRAWN	
DESIGNED	

FINAL PLAT

WHISPERING OAKS PHASE III  
LOTS 198-295 INCLUSIVE & OUTLOTS "A", "B" & "C"  
POTIOWATAMIE COUNTY, IOWA

JOB NO. 06519.207

SHEET 2 of 5

FILED 19/09/2023 10:00 AM AT THE OFFICE OF THE CLERK OF COURTS, POTIOWATAMIE COUNTY, IOWA. BY: JAMES M. JONES, CLERK OF COURTS.

**FINAL PLAT**  
**WHISPERING OAKS PHASE III**  
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Whispering Oaks

OUTLOT C

OUTLOT "A"

OUTLOT "B"

OUTLOT "C"

NE 1/4 NW 1/4 Sec. 4-74-43

NE 1/4 NE 1/4 Sec. 5-74-43

DATE	BY	APP.	REVISIONS
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**SCHMEMER**

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FINAL PLAT  
 POTTAWATTAMIE COUNTY, IOWA  
 WHISPERING OAKS PHASE III  
 LOTS 198-295 INCLUSIVE & OUTLOTS "A", "B", & "C"

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JOB NO. 08519.207  
 SHEET 3 of 5

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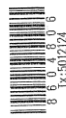
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RECORDER'S OFFICE



2022-01067  
RECORDER MARYLN HEBLING  
POTTAWATTAMIE COUNTY, IA  
FILE TIME: 01/21/2022 10:38:39 AM  
RECORDING FEE  
140.00  
EACH FEE  
1.00

AUDITOR'S OFFICE  
THE PARCEL DESIGNATION(S) SHOWN ON THE ATTACHED PLAT OF SURVEY HAVE BEEN REVIEWED AND ACCEPTED BY THE  
POTTAWATTAMIE COUNTY, IOWA, AUDITORS OFFICE.

MELYN HOUSER, CO. AUDITOR  
DATE

FINAL PLAT  
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LOTS 198 - 295 INCLUSIVE, OUTLOTS "A", "B", & "C"

A TRACT OF LAND BEING PART OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 74 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH PART OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH LOT 3, OF THE AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; AND ALSO TOGETHER WITH LOT 1, AUDITORS SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN; ALL LOCATED IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

RECORDER'S INDEX
DATE OF SURVEY
SURVEYOR: JEREMY M. BENDER
OFFICE: 1000 WEST 1ST STREET
COUNTY: POTTAWATTAMIE
LOT:
BLOCK:
SUBMISSION: TOWNSHIP: 74 RANGE: 43
SECTION: 5 TOWNSHIP: 74 RANGE: 43
ALLOTMENT PART: NW 1/4 NW 1/4
SECTION: 3 TOWNSHIP: 74 RANGE: 43
ALLOTMENT PART: NE 1/4 NE 1/4
SECTION: 33 TOWNSHIP: 75 RANGE: 43
ALLOTMENT PART: SE 1/4 SE 1/4
SECTION: 32 TOWNSHIP: 75 RANGE: 43
ALLOTMENT PART: SE 1/4 SE 1/4
PARCEL DESIGNATION(S):
DRAWN BY: J. S. DEVELOPMENT, LLC
CHECKED BY: J. S. DEVELOPMENT, LLC
DESIGNED BY: J. S. DEVELOPMENT, LLC
DATE: 08/01/2021



- 1 Inch = 200 ft.
- LEGEND
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SCHMEMMER  
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LOTS 198-295 INCLUSIVE & OUTLOTS "A", "B" & "C"  
POTTAWATTAMIE COUNTY, IOWA

JOB NO. 00619.207  
SHEET 1 of 5

**Curtis J. Helthoff**  
ATTORNEY AT LAW  
508 SOUTH 8<sup>TH</sup> STREET  
Council Bluffs, IA 51501

(712)-325-0888  
FAX (712)-325-0884

May 23, 2014

B.H.I. Properties, Inc.  
c/o Mr. John Bachman  
Pansing, Hogan, Ernst & Bachman  
10250 Regency Circle  
Omaha, NE 68114

**HAND DELIVERED**

TO: DLP  
FROM: Curtis Helthoff  
TIME: 3:05pm  
DATE: 5-23-14

RE: Pottawattamie County Real Estate

Dear Ladies and Gentlemen:

I have reviewed the Report of Title of Abstract Guaranty Company to the real estate legally described as follows:

Lot 3, Auditor's Subdivision of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, Township 75, Range 43, and Lot 2, Auditor's Subdivision of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, Township 75, Range 43, and the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, Township 74, Range 43, the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, Township 74, Range 43, except the West 3 chains of the South 13.33 chains, the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 4, Township 74, Range 43, lying West of the public road; Lot 1, Auditor's Subdivision of the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, Township 75, Range 43, all subject to the right of way of the public road and except a tract of land legally described as: A part of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, Township 74, Range 43, and a part of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, Township 74, Range 43, more particularly described as follows: Commencing at the Southeast corner of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 4, that being the point of beginning; thence West along the South line of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 4 and the South line of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 5, a total distance of 1633.5 feet; thence North 00°01'30" West a distance of 800.00 feet; thence East and parallel to the South line of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, and the South line of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, a distance of 1633.5 feet to a point on the East line of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 4; thence South 00°01'30" East a distance of 800.00 feet to the point of beginning. All of said real estate is in Pottawattamie County, Iowa,

which Report of Title searches the Records of Pottawattamie County through May 19, 2014 at 8:00 A.M. From my review of the Report of Title, I find marketable title to be as follows:

-Undivided 1/3 Interest in Katherine E. Williams, Trustee, under the Living Trust Agreement dated November 19, 2013;

-Undivided 1/3 interest in Sandra Hamilton, as Trustee of the Sandra Hamilton Revocable Trust created under Declaration of Trust dated November 1, 1988, as amended;

-Undivided 1/3 interest in Linda L. Peters,

all of which is subject to the following:

1. An Easement which was recorded on April 3, 1969 at Book 1483, Page 73 granting an Easement to Iowa Power and Light Company for an electric transmission line.
2. An easement recorded on July 3, 1975 at Book 76, Page 214 granting an Easement to Northwestern Bell Telephone Company to install and maintain a communication line through the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 4, Township 74, Range 43 in Pottawattamie County.
3. An Easement for Public Highway granted to Pottawattamie County and recorded on May 29, 1998 at Book 98, Page 51655, and re-recorded on June 19, 1998 at Book 98, Page 56102.
4. An Easement for Public Highway granted to Pottawattamie County dated August 25, 1998 and recorded on August 25, 1998 at Book 99, Page 56102.
5. A Mortgage for the amount of \$250,000.00 in which the Estate of Clarence Hess Peters is the Mortgagor and in which Katherine E. Williams is the Mortgagee which is dated February 12, 2005 and was recorded on February 15, 2005 in Book 105, Page 15146, which Mortgage was given to secure a Settlement Agreement. This Mortgage must be released.
6. A Mortgage for the amount of \$20,408.00 in which Linda L. Peters is the Mortgagor and in which Timothy S. Ellsworth is the Mortgagee which is dated September 14, 2005 and was recorded on September 16, 2005 in Book 106, Page 5711, which Mortgage was given to secure attorney fees incurred by the Mortgagee in the probate proceeding of the Estate of Clarence Hess Peters. This Mortgage must be released.
7. A Mortgage for the amount of \$20,408.00 in which Linda L. Peters is the Mortgagor and in which Daniel P. Winkel is the Mortgagee which is dated September 14, 2005 and was recorded on September 16, 2005 in Book 106, Page 5712, which



Mortgage was given to secure attorney fees incurred by the Mortgagee in the probate proceeding of the Estate of Clarence Hess Peters. This Mortgage must be released.

8. Lien searches have been conducted upon Kathleen E. Williams, Trustee under the Living Trust Agreement dated November 19, 2013; Sandra Hamilton, Trustee of the Sandra Hamilton Revocable Trust created under Declaration of Trust dated June 1, 1988, as amended; Linda L. Peters; and B.H.I. Properties, Inc., a Nebraska corporation.

9. The 2012 and all prior years real estate taxes are paid in full for each of the Tax Parcels which together compose the subject real estate. The 2012 real estate taxes are the following amounts for each of the following Tax Parcels:

-Parcel P-744305276004	=	\$428.00
-Parcel P-744305276006	=	\$314.00
-Parcel P-744305226001	=	\$474.00
-Parcel P-754332476001	=	\$648.00
-Parcel P-75433304002	=	\$36.00
-Parcel P-754333351001	=	\$560.00
-Parcel P-754304101001	=	\$730.00
-Parcel P-744304151001	=	\$350.00

10. To convey its undivided 1/3 interest in the subject real estate Katherine E. Williams, as Trustee under the Living Trust Agreement dated November 19, 2013, must execute a Trustee Warranty Deed to B.H.I. Properties, Inc., a Nebraska corporation, which Trustee Warranty Deed must be in a form which is substantially similar to Official Form No. 107 of the Iowa State Bar Association. In addition, Katherine E. Williams, as Trustee under the Living Trust Agreement dated November 19, 2013 must execute and place of record an Individual Trustee's Affidavit in a form which is substantially similar to Official Form No. 113 of the Iowa State Bar Association. B.H.I. Properties, Inc., a Nebraska corporation, must in turn execute and place of record a Purchaser's Affidavit stating its reliance on such Individual Trustee's Affidavit in a form which is substantially similar to Official Form No. 115 of the Iowa State Bar Association.

11. To convey its undivided 1/3 interest in the subject real estate Sandra Hamilton, Trustee of the Sandra Hamilton Revocable Trust created under Declaration of Trust dated June 1, 1988, as amended, must execute a Trustee Warranty Deed to B.H.I. Properties, Inc., a Nebraska corporation, which Trustee Warranty Deed must be in a form which is substantially similar to Official Form No. 107 of the Iowa State Bar Association. In addition, Sandra Hamilton, Trustee of the Sandra Hamilton Revocable Trust created under Declaration of Trust dated June 1, 1988, as amended, must execute and place of record an Individual Trustee's Affidavit in a form which is substantially similar to Official Form No. 113 of the Iowa State Bar Association. B.H.I. Properties, Inc., a Nebraska corporation must in turn execute and place of record a Purchaser's Affidavit stating its reliance on such Individual Trustee's Affidavit in a form which is substantially similar to Official Form No. 115 of the Iowa State Bar Association.

12. To convey her undivided 1/3 interest in the subject real estate Linda L. Peters must execute a Warranty Deed to B.H.I. Properties, Inc., a Nebraska corporation. Said Warranty Deed must recite the marital status of Linda L. Peters, and if she is a married person her spouse must also execute said Warranty Deed.

### CAUTION

This Opinion is made entirely from the above-referenced Report of Title of Abstract Guaranty Company. As such, the undersigned makes no determination concerning matters or problems which would be disclosed by a survey; the rights of parties who may be in possession of the real estate, other than the titleholders of record; and the right to file Mechanic's Liens against the premises for labor or materials furnished in connection with improvements made on the real estate within 90 days of furnishing the last item or improvement.

Very truly yours,



Curtis J. Helthoff  
Member No. 2590

CJH:mee

CERTIFICATE AND RECEIPT

=====

STATE OF IOWA

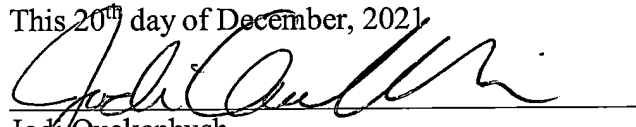
} SS.

POTTAWATTAMIE COUNTY,

The undersigned, City Clerk of the City of Council Bluffs, Iowa, hereby certifies:  
Resolution 21-291 and proof of publication are the same that appears as record in this  
office.

Witness my hand and seal of Council Bluffs, Iowa,

This 20<sup>th</sup> day of December, 2021



Jodi Quakenbush  
City Clerk of the City of Council Bluffs

=====

**RESOLUTION NO. 21-291**

**A RESOLUTION GRANTING FINAL PLAT APPROVAL OF A 101-LOT RESIDENTIAL SUBDIVISION TO BE KNOWN AS WHISPERING OAKS, PHASE III, LEGALLY DESCRIBED AS BEING A TRACT OF LAND THAT IS PART OF THE NE1/4 NE1/4 OF SECTION 5-74-43, AND ALSO WITH PART OF THE NW1/4 NW1/4 OF SECTION 4-74-43, AND ALSO TOGETHER WITH LOT 3, AUDITOR'S SUBDIVISION OF THE SW1/4 SW1/4 OF SECTION 33-75-43, AND ALSO TOGETHER WITH LOT 1, AUDITOR'S SUBDIVISION OF THE SE1/4 SE1/4 OF SECTION 32-75-43, ALL IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.**

**WHEREAS,** T S Development, LLC has submitted a request for final plat approval for 101-lot residential subdivision to be known as Whispering Oaks Phase III; and

**WHEREAS,** The proposed subdivision is located North of Forest Glen Drive and between Sycamore Street and Bayberry Circle and totals 63.72 acres in size; and

**WHEREAS,** The preliminary subdivision plan for Whispering Oaks Phase III was approved by the Council Bluffs City Council on January 27, 2020 by Resolution No. 20-24 and this proposed final plat is generally consistent with the approved preliminary plan; and

**WHEREAS,** The following comments were provided for the proposed subdivision request:

- A. The proposed subdivision is consistent with the purpose and intent of the Council Bluffs Municipal Subdivision and Zoning Ordinances.
- B. The subject property is zoned R-1/Single-Family Residential District. All building construction within the proposed subdivision shall comply with the site development standards stated in Chapter 15.08B *R-1/Single-Family Residential District* of the Council Bluffs Municipal Code (Zoning Ordinance).
- C. All proposed lots comply with minimum R-1/Single-Family Residential District lot dimensions and size requirements.
- D. Balsam Street, Balsam Court, and Hemlock Street are proposed to be dedicated to the City of Council Bluffs as part of the Whispering Phase III final plat. All lots in this subdivision will have frontage and direct access to one or more of these streets. Furthermore, a note has been placed on the final plat that dedicates all rights of direct vehicular access from Lots 201, 202, 252, 253, and 295 onto Forest Glen Drive to the City of Council Bluffs.
- E. The majority of all public utility infrastructure and streets are fully constructed within the subdivision. Section 14.12.070, Performance Guarantees of the Council Bluffs Subdivision Ordinance allows a developer to establish an escrow account with the City in lieu of actual and immediate construction of any required improvement for a subdivision. The developers engineer has submitted an opinion of probable cost and a check in the amount of \$108,679.59 to the City of Council Bluffs for all outstanding infrastructure items that are not completed (see Attachment B). This escrow account will be held in the City Clerks' office until all remaining infrastructure items outlined in the engineer's opinion of probable cost are completed, inspected,

- and approved by the Council Bluffs Public Works Department. Once all work is completed, the escrow funds will be returned back to the developer.
- F. The far westerly section of Hemlock Street is constructed half-way through Outlot A and then dead-ends. The right-of-way for completing this section of Hemlock Street will be dedicated to the City as part of the Whispering Oaks Phase III final plat; however the street will not be fully constructed until such time land to the immediate west is developed, as per the developer/owner's and the adjoining property owners, David and Anna Jones, court agreement. Temporary turnaround easements for the far westerly section of Hemlock Street must be established on the final plat and their location and size shall not impede development on any adjacent buildable lot. A letter from the developer's engineer explaining the timing for completing Hemlock Street is included with this report as Attachment 'C'.
- G. The Council Bluffs Public Works Department provided the following comments:
1. Cost estimate for work remaining in the subdivision is acceptable to Public Works. A check in the amount of \$108,679.59 has been filed with the City Clerk to cover the cost of all remaining work.
  2. A temporary turnaround easement will be required on all lots affected by the engineers plan.
  3. Execution of the final plat does not waive the need for inspection and testing of all infrastructure being dedicated to the City.
  4. All documentation of test and inspections shall be provided to the City upon completion.
  5. The developer/owner shall require individual lots to have a sediment and erosion control plan at the time of building construction.
  6. The developer/owner shall assume responsibility for any erosion issues within the platted lots and all outlots until such time they are turned over to private owners or a homeowners association.
- H. The Council Bluffs Water Works (CBWW) stated all water mains are installed in the subdivision, except for a 100' section along the far westerly portion of Hemlock Street. CBWW stated the last 100' of the water main extension should be completed in the near future. Said water main section shall be completed prior to executing the final plat.
- I. Black Hills Energy stated they have no concerns with the proposed final plat.
- J. Lumen stated they have no concerns for the proposed final plat.
- K. MidAmerican Energy stated they have no concerns regarding the proposed final plat.
- L. All electric, cable and communication facilities shall be installed underground. All costs to construct, remove and/or relocate any utilities for

the proposed subdivision shall be the responsibility of the applicant and not the City.

- M. A public sidewalk shall be installed along the frontages of each lot prior to issuance of a Certificate of Occupancy for a dwelling on each lot, at no cost to the City. Additionally, a public sidewalk shall be installed along the frontage of Outlots A and C once Hemlock Street is fully constructed.
- N. A copy of the any private easements/covenants shall be provided to the City and recorded with the final plat.
- O. The following technical corrections shall be made to the final plat prior to being executed:
  - 1. Sheet 2 of 5:
    - a. Label the lot depth and course bearing distance along the common lot line between Lots 232 and 233, and between Lots 233 and 234.
    - b. Revise the course bearing distance along the westerly property line of Lot 42, Whispering Oaks Subdivision to be consistent with the course bearing distance stated in the subdivisions legal description on sheet 5 of 5.
    - c. Notate the book/page number of the recorded utility easements lying south/southwest of Outlot A, and south of Lots 232 and 233 on the final plat.
    - d. Label the book/page number for the recorded 30 foot-wide sanitary sewer easement that extends through Outlot B.
  - 2. Sheet 3 of 5:
    - a. Label the easement type and width between Lots 241 and 242, and assign to the Whispering Oaks Homeowners Association as part of the "Standard Utility Easement" paragraph on sheet 5 of 5.
    - b. Label the lot depth and course bearing distance along the common property line between Lots 288 and 289.
    - c. Revise the course bearing distance along the westerly property line of Lot 42, Whispering Oaks Subdivision to be consistent with the course bearing distance stated in the subdivisions legal description on sheet 5 of 5.
    - d. Label the book/page number for the recorded 30 foot-wide sanitary sewer easement that extends through Outlot B.
  - 3. Sheet 5 of 5:
    - a. Revise the "Proprietor's Statement" to include Outlots B and C, and replace the street names River Birch Court and Linden Court with Balsam Street, Balsam Circle, and Hemlock Street; and

**WHEREAS,** The Community Development Department recommends final plat approval of a 101-lot residential subdivision to be known as Whispering Oaks Phase III, as legally

described above and as shown on Attachment 'A', subject to all comments stated above and following conditions:

- A. All technical corrections shall be incorporated into the final plat document prior to being executed; and
- B. The final plat shall be recorded within 90 days of City Council approval or the plat shall become null and void unless an extension of has been requested and granted by the Community Development Department Director; and
- C. Conform to all City standards and specifications, the zoning and subdivision ordinances and the Department of Public Works Standards for Public Improvements; and
- D. All utilities shall be installed underground. Any cost to remove and/or relocate any utilities shall be the sole expense of the applicant and not the City; and
- E. The applicant shall provide a copy of any proposed covenants and/or private restrictions associated with the subdivision to the City, or place a note on the final plat indicating none will be recorded; and
- F. A public sidewalk shall be installed along the frontages of each lot prior to issuance of a Certificate of Occupancy for a dwelling unit on each lot, at no cost to the City.
- G. The developer shall provide the City with two sets of as-built construction drawings and a two-year maintenance bond, upon acceptance of all required improvements.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**


That the final plat approval for a 101-lot residential subdivision to be known as Whispering Oaks Phase III, as legally described above and as shown on Attachment 'A', is hereby approved subject to all local, state and federal regulations; and

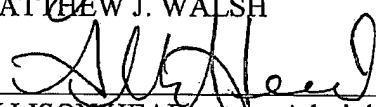
**BE IT FURTHER RESOLVED**

That the Mayor and City Clerk are hereby authorized and directed to endorse the final plat.

ADOPTED AND APPROVED

October 11, 2021

  
\_\_\_\_\_  
MATTHEW J. WALSH Mayor

Attest:   
\_\_\_\_\_  
ALLISON HEAD Administrative Secretary

**Proof Of Publication**

State of Iowa

Pottawattamie County

**NOTICE OF PUBLIC HEARING**

**TO WHOM IT MAY CONCERN:**

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on the request of TS Development, LLC, represented by Charles Huddleston of The Schemmer Associates Inc., for final plat approval of a major residential subdivision to be known as Whispering Oaks Phase III, legally described as a tract of land being part of the NE1/4 NE1/4 of Section 5-74-43, and also with part of the NW1/4 NW1/4 of Section 4-74-43, and also together with Lot 3, Auditor's Subdivision of the SW1/4 SW1/4 of Section 33-75-43, and also together with Lot 1, Auditor's Subdivision of the SE1/4 SE1/4 of Section 32-75-43, all in the City of Council Bluffs, Pottawattamie County, Iowa.


You are further notified that the public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m., on the 11th day of October, 2021 in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

Jodi Quakenbush, City Clerk  
2021 (10) 3 - 1 Sunday

I, (the undersigned) on my oath do solemnly that I am an authorized representative of CBN Daily Nonpareil, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper 1 consecutive time(s) as follows:

The First publication thereof began on the 03rd day of October, 2021.

  
Billing Representative

Sworn to and subscribed before me this 3rd day of October, A.D. 2021.

  
Notary Public

State of Virginia  
County of Hanover  
My Commission expires

Linh Thuy Le  
Notary Public  
Commonwealth of Virginia  
Reg. No. 7953581  
My Comm. Expires Nov. 30, 2025

CITY OF COUNCIL BLUFFS  
209 PEARL ST.  
COUNCIL BLUFFS, IA 51503

Publication Cost: \$17.84  
Customer Number: 1003258  
Order Number: 0000262192

E-mail

[jquakenbush@councilbluffs-ia.gov](mailto:jquakenbush@councilbluffs-ia.gov)



Prepared by and when recorded return to: John Q. Bachman, Pansing Hogan Ernst & Bachman LLP, 10250 Regency Circle, Suite 300, Omaha, NE 68114; Telephone: (402) 397-5500

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS OF WHISPERING OAKS,  
A SUBDIVISION IN POTTAWATTAMIE COUNTY, IOWA**

(Lots 1 through 150, inclusive, and Outlot A, Whispering Oaks)

This SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Second Amendment") is made the 29<sup>th</sup> day of December, 2021, by TS DEVELOPMENT, LLC, an Iowa limited liability company, hereinafter referred to as the "Declarant."

PRELIMINARY STATEMENT

By Declaration of Covenants, Conditions, Restrictions and Easements of Whispering Oaks, a subdivision in Pottawattamie County, Iowa, dated December 7, 2017 (the "Declaration"), the Declarant imposed covenants, conditions and restrictions on Lots 1 through 150, inclusive, and Outlot A in Whispering Oaks, a subdivision, as surveyed, platted and recorded in Pottawattamie County, Iowa pursuant to the Final Plat for Whispering Oaks filed December 11, 2017, as Instrument No. 2017-16378, and the Final Plat for Whispering Oaks Phase II filed December 7, 2017, as Instrument No. 2017-16263, in the records of the Pottawattamie County Recorder.

The Declaration was amended by that certain First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements of Whispering Oaks, a subdivision in Pottawattamie County, Iowa dated March 12, 2018, and filed March 16, 2018, as Instrument No. 2018-02998 in the records of the Pottawattamie County Recorder. The Declaration and First Amendment are hereinafter collectively referred to as the "Declaration."

Declarant has considered further amendment of the Declaration for purposes of the addition of a Section 24 to Article I of the Declaration. Article V, Section 2 of the Declaration allows the Declarant to amend the Declaration in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date of the Declaration.

NOW, THEREFORE, pursuant to the authority granted to the Declarant in Article V, Section 2 of the Declaration, Declarant hereby amends the Declaration as follows:

1. A new Section 24 is added to Article I of the Declaration which shall read as follows:

24. Land in Outlots shall remain natural areas, no cutting of trees except for safety reasons. The City of Council Bluffs and the Declarant shall have unlimited access to the Outlots to make storm water or infrastructure repairs when necessary and determine if trees need to be removed for those reasons.

2. Except as amended herein, the Declaration shall remain in full force and effect as previously recorded.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to be executed on the date and year first written above.

DECLARANT:

TS DEVELOPMENT, LLC, an Iowa limited liability company

By: *Gerald L. Torczon*  
Gerald L. Torczon, Manager

STATE OF NEBRASKA )  
                                          ) ss.  
COUNTY OF SARPY     )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of December, 2021, by GERALD L. TORCZON, Manager of TS DEVELOPMENT, LLC, an Iowa limited liability company, on behalf of the company.

*Mary Jayne Throener*  
Notary Public



**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS OF WHISPERING OAKS,  
A SUBDIVISION IN POTTAWATTAMIE COUNTY, IOWA**

(Lots 198 through 295, inclusive, and Outlots A through C, inclusive, Whispering Oaks)

THIS DECLARATION, made on the date hereinafter set forth, is made by TS DEVELOPMENT, LLC, an Iowa limited liability company, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Pottawattamie County, Iowa and described as follows:

Lots 198 through 295, inclusive, and Outlots A through C, in Whispering Oaks, a subdivision, as surveyed, platted and recorded in Pottawattamie County, Iowa.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of Whispering Oaks, for the maintenance of the character and residential integrity of Whispering Oaks, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Whispering Oaks.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

**ARTICLE I.  
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, outlet, or for other non-profit use.

After recording, return to:  
John Q. Bachman  
PANSING HOGAN ERNST & BACHMAN LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114

2. No residence, building, fence (other than fences constructed by the Declarant), wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or "discs", solar heating or cooling device, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading, excavation or tree removal for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

A. An owner desiring to erect an Improvement shall deliver two (2) sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description, type, quality, color (including any change in color) and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, owner shall notify the Declarant of the owner's mailing address.

B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

C. Written notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. No Lot owner, or combination of Lot owners, or other person or persons, shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. Unless a twenty-five (25) foot setback is approved by the Declarant, no structure, building or porch shall be constructed, erected, installed or situated within thirty (30) feet of the front yard line, and except as set forth herein, all Improvements on the Lots shall comply with all other setback requirements of the Zoning Code of the City of Council Bluffs, Iowa.

4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures and at least twenty-five percent (25%) of the front elevation of the main residential structure must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be covered with clay-fired brick, stone, siding or shall be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with wood or other material approved in writing by Declarant. Fireplace chimneys which face a street must be covered with brick or stone. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with asphalt shingles (30 year heritage style and weathered wood in color).

5. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No business activities of any kind whatsoever shall be conducted on any Lot including home occupations as defined in the Zoning Code of the City of Council Bluffs, Iowa; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots.

6. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots. Any change in color or use of materials for the exterior of any Improvement subsequent to the Declarants initial approval shall be submitted to Declarant or its assigns for review in accordance with Article I, Section 2 hereof.

7. Exterior television or radio antenna of any sort shall not be permitted on any Lot, except a satellite receiving dish not exceeding twenty-four (24) inches in diameter and attached directly to the residence may be permitted provided that the location and size of the proposed satellite receiving dish be first approved by the Declarant, or its assigns. No tree houses, tool sheds, windmills, or similar structures shall be permitted on any Lot.

8. No repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

9. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 9 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Council Bluffs, Iowa.

10. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

11. No fence shall be permitted to extend no closer than to fifty percent (50%) of the front line or halfway behind a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of wrought iron or vinyl. Vinyl fences must be approved by the Declarant and may be denied

in Declarant's sole discretion. Fences which are adjacent to any boulevard must be composed of wrought iron. No fence shall be of the chain link, wood or wire types. **All fences must be approved by the Declarant.** Any fence shall be constructed solely within a Lot boundary and may not encroach onto another Lot. A survey depicting the location shall be provided prior to the construction of the fence, and if not, an as-built survey of the completed fence prepared by a licensed surveyor must be provided to the Declarant showing the fence is located entirely within a Lot without any encroachments to another Lot.

12. No swimming pool may extend more than one (1) foot above ground level.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

14. A public sidewalk shall be constructed of concrete five (5) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Council Bluffs.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Maximum driveway slope at the sidewalk intersections shall be no more than two percent (2%) cross slope within public right-of-way to provide for a tabled driveway cross slope that is compliant with ADA/PROWAG guidelines, if possible, and City of Council Bluffs standards. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay or driveway approaches will be permitted. The Lot owner shall be responsible to provide adequate remedial measures to prevent street creep/driveway binding on any curved streets where the street abuts the driveway approach.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. Dog houses shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence. Dog runs or kennels shall be permitted only with the approval of the Declarant, or its assigns; provided always that any permitted dog run or kennel shall be located immediately adjacent to the rear of the residence. No animals, livestock, agricultural-type animals, fowl, or poultry of any kind, including pot-bellied pigs, shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their owner and are not permitted to run loose outside the Lot of the owner.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two (2) or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

19. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside Whispering Oaks to any Lot without the written approval of Declarant.

20. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

21. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations and designs as it may determine appropriate in its sole and absolute discretion on or from any Lot, including "track-out". The Lot owner shall be solely responsible for the cost of any erosion control measures. The Lot Owner shall not materially change the grade or contour of any Lot and shall control the flow of surface water from its Lot so not to interfere with the drainage of any adjoining or downstream Lot.

22. During the mass grading operations for the Lots, Declarant has retained professional engineers to periodically conduct moisture and field density testing services related to the soil conditions and to establish adequate slope across the Lots for proper surface drainage conditions. Upon completion of the mass grading operations, the future responsibility of the soil conditions, the adequate slope and proper surface drainage and final grading of the Lot is the sole responsibility of the Lot owner to ensure proper drainage.

23. All Lots are subject to an outfall sewer connection fee in the amount of \$1,275.00 payable to the City of Council Bluffs which shall be the obligation of the Lot Owner. The Lot Owner shall pay such fee to the City of Council Bluffs at the time of building permit application.

24. Land in Outlots shall remain natural areas, no cutting of trees except for safety reasons. The City of Council Bluffs and the Declarant shall have unlimited access to the Outlots to make storm water or infrastructure repairs when necessary and determine if trees need to be removed for those reasons.

## ARTICLE II. HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused the incorporation of the COUNCIL BLUFFS WHISPERING OAKS HOMEOWNERS ASSOCIATION, an Iowa not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; and dedicated and nondedicated roads, paths, ways and green areas; outlots; storm water retention areas; signs and entrances for Whispering Oaks. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Whispering Oaks; and the protection and maintenance of the residential character of Whispering Oaks.

2. Membership and Voting. Whispering Oaks is now divided into two hundred forty-eight (248) separate residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Association shall have two (2) classes of voting members, Class A Members and Class B Members, defined as follows:

CLASS A: Class A Members shall be all Owners, with the exception of Declarant or its assigns. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot. It is understood that the Owner of each respective Lot created as a result of a Lot Split shall be entitled to one (1) vote.

CLASS B: Class B Members shall be the Declarant or its assigns which shall be entitled to four (4) votes for each Lot owned. For purposes herein, Declarant shall be considered the Owner of a Lot notwithstanding the existence of any contract for sale or purchase agreement, with such ownership status continuing in all events until title is transferred by Declarant through the execution, delivery and recordation of a Warranty Deed. A Class B membership shall terminate and be converted into a Class A membership upon the occurrence of the date on which the total votes outstanding in the Class A membership shall equal or exceed the total votes outstanding in the Class B membership.

The Class A and Class B Members may be sometimes collectively referred to as "Members".

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Revised Iowa Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the officers, shall include, but shall not be limited to, the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near Whispering Oaks.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.



D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association and execution of such documents and the doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair the fence, signs and landscaping which have been installed in easement areas of the Whispering Oaks subdivision and center islands dividing dedicated roads, in generally good and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successor, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot. Notwithstanding the foregoing, the Board of Directors or the Declarant may levy an assessment for the purpose of defraying the cost of the construction and installation of U.S. Postal Service mailboxes in type, design and location determined by the Board of Directors or Declarant, in an amount not to exceed Three Hundred Fifty and no/100 Dollars (\$350.00) per Lot. Maintenance of the mailboxes shall be the sole responsibility of the users thereof.

10. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots as provided in Section 6 above.

11. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

12. Effect of Nonpayment of Dues or Assessments; Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of the Owner's Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

13. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

14. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be effected from time to time by the Declarant or Declarant's assignee by recordation with the Pottawattamie County, Iowa Recorder of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article II, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

ARTICLE III.  
EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to CenturyLink, Cox Communications and any company which has been granted a franchise to provide a cable television system within the Lots, the City of Council Bluffs, Black Hills Energy, and Mid American Energy, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded. Provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of the date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways, but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

2. Other easements are provided for in the final plat of Whispering Oaks Phase III which is filed in the office of the Pottawattamie County, Iowa Recorder as Instrument No. \_\_\_\_\_.

ARTICLE IV.  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by TS Development, LLC, an Iowa limited liability company, or any person, firm, corporation, partnership, or entity designated in writing by TS Development, LLC, an Iowa limited liability company, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

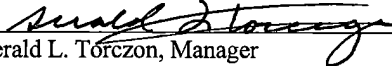
3. TS Development, LLC, an Iowa limited liability company, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 29<sup>th</sup> day of December, 2021.

DECLARANT:

TS DEVELOPMENT, LLC, an Iowa limited liability company

By:   
Gerald L. Torczon, Manager

STATE OF NEBRASKA     )  
                                  ) ss.:  
COUNTY OF SARPY     )

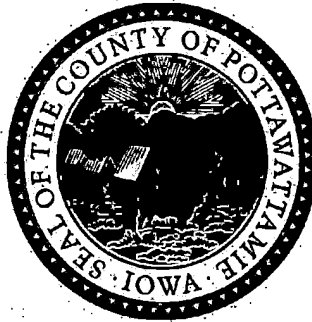
The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of December, 2021, by GERALD L. TORCZON, Manager of TS DEVELOPMENT, LLC, an Iowa limited liability company, on behalf of the company.



  
Notary Public

# Pottawattamie County Auditor's Certification Of Subdivision Name Approval

**MELVYN J. HOUSER**  
**POTTAWATTAMIE COUNTY AUDITOR**  
**AND ELECTION COMMISSIONER**  
P. O. BOX 649  
COUNCIL BLUFFS, IOWA 51502-0649



Real Estate Division  
Phone (712) 328-5700  
FAX (712) 328-4740

I, Melvyn J. Houser, Auditor of Pottawattamie County, Iowa, or designee, do hereby certify that the subdivision name of the attached platting is unique within Pottawattamie County and is hereby approved.

Name of new subdivision:

**WHISPERING OAKS PHASE III**

**Melvyn J Houser**

1/12/2022

Signed

Date