

**Curve Table**

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C09	14.21	125.00	6.511	N68°31'49"W	14.21
C10	70.97	529.00	7.8673	N73°43'02"W	70.92
C102	36.72	50.00	42.8203	N63°54'55"W	35.90
C103	46.14	57.00	49.3929	N79°07'12"W	47.63
C104	71.56	57.00	71.9201	S47°13'06"W	66.95
C105	72.32	57.00	72.6965	S32°05'31"E	67.56
C106	46.14	57.00	49.3929	N66°51'59"E	47.63
C107	43.47	50.00	48.8145	N71°17'19"E	42.12
C108	70.96	327.00	12.4337	N83°52'30"W	70.82
C109	31.63	327.00	5.5403	N74°53'15"W	31.62
C110	39.05	327.00	6.8430	N68°41'40"W	39.03
C111	104.67	327.00	18.3398	N74°26'34"W	104.22
C112	39.70	50.00	45.6868	N68°47'19"E	38.87
C113	21.07	57.00	21.1773	N56°37'42"E	20.95
C114	51.32	57.00	51.5950	S66°59'26"E	49.50
C115	50.44	57.00	50.7028	S35°59'48"E	48.81
C116	50.62	57.00	50.8847	S14°56'49"W	48.97
C117	52.41	57.00	52.6688	S68°43'56"W	50.59
C118	43.73	57.00	43.9604	N64°56'41"W	42.87
C119	39.70	50.00	45.6868	N65°42'48"W	38.87
C120	34.57	175.00	11.3169	S70°57'53"E	34.51
C121	97.71	475.00	11.6882	S77°57'35"E	97.55
C122	57.21	475.00	6.8300	S68°41'40"E	57.17
C123	42.46	529.00	4.6207	N67°34'23"W	42.47
C124	68.28	529.00	7.3956	N61°15'31"W	68.23
C125	15.71	57.00	15.7884	N54°16'33"E	15.66
C126	11.49	57.00	11.5468	N48°38'56"W	11.47
C127	23.08	335.00	3.9465	S3°30'43"W	23.08

**Parcel Area Table**

Parcel #	Area
124	14437.20
125	12001.02
126	12446.15
127	13162.55
128	13668.23
129	24273.59
130	24238.95
131	13319.94
132	14397.95
133	11833.46
134	11460.00
135	15716.10
136	12123.88
137	10640.05
138	10640.05
139	10640.05
140	10640.18
141	11507.78
142	17634.56
143	14506.70
144	16463.33
145	13684.10
146	13684.10
147	10377.46
148	10636.80
149	10536.14
150	12118.80

**Parcel Area Table**

Parcel #	Area
124	14437.20
125	12001.02
126	12446.15
127	13162.55
128	13668.23
129	24273.59
130	24238.95
131	13319.94
132	14397.95
133	11833.46
134	11460.00
135	15716.10
136	12123.88
137	10640.05
138	10640.05
139	10640.05
140	10640.18
141	11507.78
142	17634.56
143	14506.70
144	16463.33
145	13684.10
146	13684.10
147	10377.46
148	10636.80
149	10536.14
150	12118.80

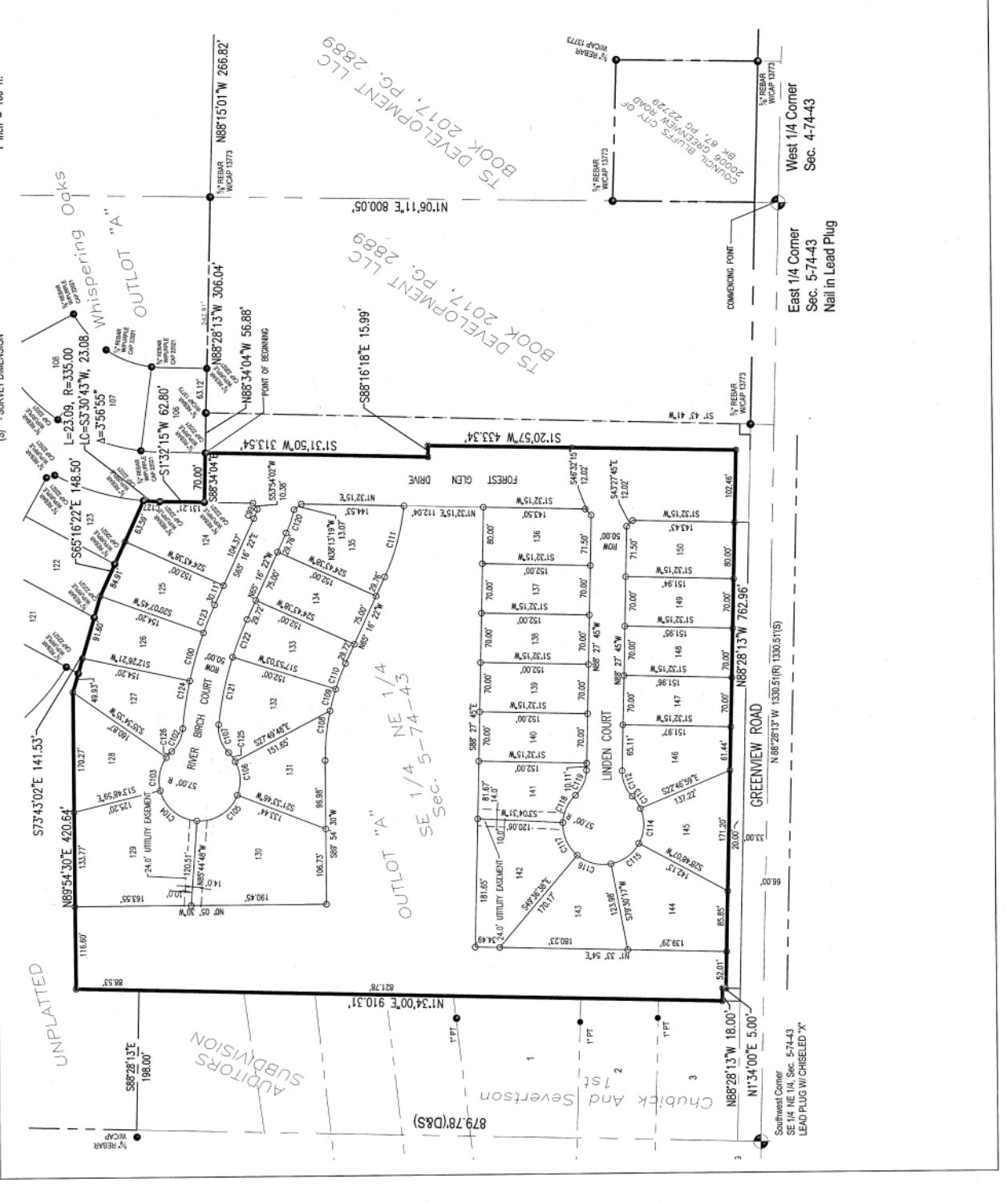
**FINAL PLAT**  
**WHISPERING OAKS PHASE II**  
**LOTS 124 - 150 INCLUSIVE & OUTLOT "A"**  
 A TRACT OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5 TOWNSHIP 74 RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

LEGEND:  
 - SECTION CORNERS FOUND (AS NOTED)  
 - CORNERS FOUND (AS NOTED)  
 - CORNERS SET (6" REBAR W/ #2021 PURPLE CAP)  
 - COMPUTED CORNER  
 (P) - PLAT DIMENSION  
 (R) - RECORD DIMENSION  
 (S) - SURVEY DIMENSION

1 inch = 100 ft.

RECORDERS OFFICE  
 2017-16263  
 RECORDERS BUREAU  
 POTTAWATTAMIE COUNTY, IA  
 FILE TIME 12/07/2017 10:49:00 AM  
 RFA FEE \$14.00  
 RFA FEE \$1.00  
 ECM 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, AUDITOR'S OFFICE.  
 MELYNN HOUSER, CO. AUDITOR  
 DATE 12-7-17



**FINAL PLAT**  
**WHISPERING OAKS PHASE II**  
**LOTS 124 - 150 INCLUSIVE & OUTLOT "A"**  
A TRACT OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5 TOWNSHIP 74 RANGE 46 WEST OF THE 5TH PRINCIPAL MERIDIAN CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

**OWNERS CERTIFICATION**

WE HEREBY CERTIFY THAT WE WILL MEET ALL EQUAL OPPORTUNITY AND FAIR MARKETING OBJECTIVES CONSISTENT WITH FEDERAL, STATE AND LOCAL GUIDELINES. WE HEREBY CERTIFY THAT THE FOLLOWING DOCUMENTS WILL BE RECORDED WITH THE POTTAWATTAMIE COUNTY RECORDER CONTEMPORANEOUSLY WITH THE FILING OF THE FINAL PLAT:

A. ALL PRIVATE RESTRICTIONS AND COVENANTS, IF ANY, WHICH WILL BE A PART OF THE SUBJECT DEVELOPMENT.  
B. CERTIFIED RESOLUTION OF EACH GOVERNING BODY APPROVING THE SUBDIVISION OR WAIVING THE RIGHT TO REVIEW.  
C. BY: [Signature]  
D. STATE OF Iowa  
E. COUNTY OF Wasson

ON THIS 27 DAY OF November, 2017, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED [Signature] TO ME PERSONALLY KNOWN WHO BEING FIRST BY ME DULY SWORN, DID SAY THAT HE OR SHE IS THE Manager AND THAT THE SAID INSTRUMENT WAS SIGNED BY HIM OR HER ON BEHALF OF T S DEVELOPMENT, LLC BY AUTHORITY OF ITS MEMBERS AND SAID THE \_\_\_\_\_ BY ITS VOLUNTARILY EXECUTED.

APPROVAL OF THE COUNCIL BLUFFS CITY COUNCIL  
THIS PLAT OF LOTS 124-150 INCLUSIVE & OUTLOT "A", WHISPERING OAKS PHASE II, HAS BEEN APPROVED BY THE COUNCIL BLUFFS CITY COUNCIL.

HONORABLE [Signature]  
ATTEST: JODI QUARENBERG, CITY CLERK

APPROVAL OF THE COUNCIL BLUFFS COMMUNITY DEVELOPMENT DEPARTMENT  
THIS PLAT OF LOTS 124-150 INCLUSIVE & OUTLOT "A", WHISPERING OAKS PHASE II, HAS BEEN APPROVED BY THE COUNCIL BLUFFS COMMUNITY DEVELOPMENT DEPARTMENT.

[Signature]  
BRANDON GARRETT, COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR

COUNTY TREASURER'S CERTIFICATION  
I, LEA VOSS, THE TREASURER OF POTTAWATTAMIE COUNTY, IOWA, HEREBY CERTIFY THAT THE PROCEEDS INCLUDED IN LOTS 124-150 INCLUSIVE & OUTLOT "A", WHISPERING OAKS PHASE II, IS FREE FROM CERTIFIED TAXES AND CERTIFIED SPECIAL ASSESSMENTS.

[Signature]  
LEA VOSS, POTTAWATTAMIE COUNTY TREASURER

STANDARD UTILITY EASEMENTS (LOTS 124-150 INCLUSIVE & OUTLOT A)  
A PERPETUAL EASEMENT IS RESERVED FOR STORM DRAINAGE AND THE INSTALLATION AND MAINTENANCE OF UTILITIES 5 FEET EACH SIDE OF INTERIOR LOT LINES AND 10 FEET IN WIDTH ALONG ALL FRONT AND REAR SIDES. OUTLOTS ARE NOT INCLUDED IN THIS NOTE. THE EASEMENT OF ALL DRAINAGE EASEMENT BEING THE RESPONSIBILITY OF THE WHISPERING OAKS HOMEOWNERS ASSOCIATION. THIS WOULD INCLUDE THE 24 FOOT-WIDE UTILITY EASEMENTS BETWEEN LOTS 129 AND 130, LOTS 141 AND 142.

**PROPRIETOR'S STATEMENT:**

KNOW ALL PERSONS BY THESE PRESENTS THAT T S DEVELOPMENT, LLC, BEING THE SOLE OWNER OF THE PROPERTY DESCRIBED WITHIN THE LEGAL DESCRIPTION AND EMBRACED WITHIN THIS PLAT, HAS CAUSED SAID PROPERTY TO BE SUBDIVIDED AS LOTS 124 THROUGH 150, INCLUSIVE, OUTLOT "A", AND PUBLIC STREET RIGHT-OF-WAY FOR AN EXTENSION OF FOREST GLEN DRIVE, RIVER BIRCH COURT, LINDEN COURT, SAID PROPERTY TO BE KNOWN AS WHISPERING OAKS PHASE II. SAID T S DEVELOPMENT, LLC, DOES HEREBY DEDICATE TO THE CITY OF COUNCIL BLUFFS, IOWA, THE RIGHT-OF-WAY FOR AN EXTENSION OF FOREST GLEN DRIVE (1.43 ACRES, MORE OR LESS), RIVER BIRCH COURT (0.65 ACRES, MORE OR LESS), LINDEN COURT (0.68 ACRES, MORE OR LESS), AS PART OF THIS PLATTING, T S DEVELOPMENT, LLC, DOES HEREBY DEDICATE OUTLOT "A" TO A NEW HOME OWNERS ASSOCIATION TO BE FORMED BY LOTS 124 THROUGH 150 INCLUSIVE, AS PART OF THIS PLATTING, T S DEVELOPMENT, LLC, DOES HEREBY DEDICATE OUTLOT "A" AND THE MAINTENANCE AND RESPONSIBILITY OF ALL DRAINAGE EASEMENTS TO THE NEW HOME OWNERS ASSOCIATION FORMED BY OWNERS OF LOTS WITHIN "WHISPERING OAKS PHASE II".

AS PART OF THIS PLATTING, T S DEVELOPMENT, LLC, AN IOWA CORPORATION DOES HEREBY GRANT TO CITY OF COUNCIL BLUFFS, A MUNICIPAL CORPORATION OF THE STATE OF IOWA, AND ITS AGENTS, CONTRACTORS AND ASSIGNS, PERMANENT NON-EXCLUSIVE EASEMENTS FOR THE PURPOSE OF CONVEYING OVERLAND STORM DRAINAGE AND CONSTRUCTING, RECONSTRUCTING, REPAIRING, ENLARGING AND MAINTAINING STORM SEWERS TOGETHER WITH NECESSARY APPURTENANCES THEREON, ON, OVER, AND ACROSS THE REAL ESTATE AS SHOWN ON THE DRAWING WHICH IS PART OF THIS DOCUMENT. THESE EASEMENTS SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. ERECTION OF STRUCTURES PROHIBITED: GRANTOR SHALL NOT ERECT ANY STRUCTURE OVER OR WITHIN THE EASEMENT AREA WITHOUT OBTAINING THE PRIOR WRITTEN CONSENT OF THE CITY ENGINEER.

B. CHANGE OF GRADE PROHIBITED: GRANTOR SHALL NOT CHANGE THE GRADE, ELEVATION, OR CONTOUR OF ANY PART OF THE EASEMENT AREA WITHOUT OBTAINING THE PRIOR WRITTEN CONSENT OF THE CITY ENGINEER.

C. RIGHT OF ACCESS: CITY SHALL HAVE THE RIGHT OF ACCESS TO THE EASEMENT AREA AND HAVE ALL RIGHT OF INGRESS AND EGRESS REASONABLY NECESSARY FOR THE USE AND ENJOYMENT OF THE EASEMENT AREA AS HEREIN DESCRIBED.

D. REMOVAL AND REPLACEMENT: THE COST OF REMOVAL AND REPLACEMENT OF ANY UNAUTHORIZED IMPROVEMENT OR STRUCTURES WITHIN THE EASEMENT AREA, NECESSITATED BY THE EXERCISE OF THE RIGHTS UNDER THIS EASEMENT, SHALL BE BORNE BY THE GRANTOR OR THEIR SUCCESSORS OR ASSIGNS.

E. SURFACE RESTORATION: CITY'S LIABILITY TO RESTORE THE SURFACE WITHIN THE EASEMENT AREA SHALL BE LIMITED ONLY TO GRADING AND SEEDING, AND REPLACEMENT OF GRANTORS SURFACED ROADWAY.

F. DUTY TO REPAIR: CITY AGREES THAT ANY DRAIN TILE, DRIVE OR ACCESS WAY, FENCE OR YARD OR OTHER IMPROVEMENTS OUTSIDE OF THE EASEMENT AREA WHICH MAY BE DAMAGED AS A RESULT OF ANY ENTRY MADE THROUGH AN EXERCISE OF THE CITY'S RIGHT OF ACCESS SHALL BE REPAIRED AT NO EXPENSE TO GRANTOR.

G. EASEMENT RUNS WITH LAND: THIS EASEMENT SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE BINDING ON GRANTOR AND ON GRANTOR'S SUCCESSORS AND ASSIGNS.

H. GRANTOR RESERVATION: GRANTOR RESERVES THE RIGHT TO USE THE EASEMENT AREA FOR OTHER PURPOSES PROVIDED HOWEVER THESE PURPOSES SHALL NOT INTERFERE WITH GRANTLESS USE OF THE EASEMENT AREA UNDER THE RIGHTS OF THIS AGREEMENT.

AS PART OF THIS PLATTING, T S DEVELOPMENT, LLC, DOES HEREBY DEDICATE ALL RIGHTS OF DIRECT VEHICULAR ACCESS FROM LOTS 124, 135, 136 AND 150 INCLUSIVE ONTO FOREST GLEN DRIVE TO THE CITY OF COUNCIL BLUFFS, IOWA.

IN WITNESS WHEREOF WE DO HERELY SET OUR HANDS FOR T S DEVELOPMENT, LLC, LIMITED LIABILITY COMPANY

AS: [Signature]  
DATE: November 27, 2017

ACKNOWLEDGEMENT TO PROPRIETOR'S STATEMENT

STATE OF Iowa  
COUNTY OF Wasson

ON THIS 27 DAY OF November, 2017 BEFORE ME THE UNDERSIGNED NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED [Signature]

[Signature]  
T S DEVELOPMENT, LLC AN LIMITED LIABILITY COMPANY, PERSONALLY KNOWN TO BE IDENTICAL PERSON WHOSE NAME APPEARS IN THE ABOVE DEDICATION, AND HE/SHE ACKNOWLEDGES THE EXECUTION THEREOF TO BE HIS/HER VOLUNTARY ACT AND DEED AS SUCH MEMBER, AND VOLUNTARY ACT AND DEED OF SAID T S DEVELOPMENT, LLC.

[Signature]  
NOTARY PUBLIC  
COMMISSION EXPIRES: September 27, 2020

[Signature]  
COMMISSION EXPIRES: September 27, 2020

**LEGAL DESCRIPTION**

A PARCEL OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5 TOWNSHIP 74 RANGE 46 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 8, THENCE NORTH 01° 06' 11" EAST, A DISTANCE OF 800.05 FEET TO A 50' REBAR WITH CAP NUMBER 13733 ON THE SOUTH LINE OF OUTLOT "A", IN WHISPERING OAKS CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, THENCE NORTH 88° 28' 13" WEST ALONG THE SOUTH LINE OF OUTLOT "A" AND LOT 106 BOTH IN WHISPERING OAKS, A DISTANCE OF 336.04 FEET TO A 5/8" REBAR WITH CAP NUMBER 19770 ALSO A POINT ON THE SOUTH LINE OF LOT 106 IN WHISPERING OAKS, A DISTANCE OF 56.08 FEET TO A 3/8" REBAR WITH PURPLE CAP NUMBER 22021 ALSO THE SOUTHWEST CORNER OF LOT 106 IN WHISPERING OAKS ALSO THE POINT OF BEGINNING; THENCE SOUTH 01° 31' 50" WEST, A DISTANCE OF 313.54 FEET; THENCE SOUTH 88° 16' 18" EAST, A DISTANCE OF 15.99 FEET; THENCE SOUTH 01° 29' 57" WEST, A DISTANCE OF 433.34 FEET; THENCE NORTH 88° 28' 13" WEST, A DISTANCE OF 792.96 FEET; THENCE NORTH 01° 34' 09" EAST, A DISTANCE OF 5.00 FEET; THENCE NORTH 88° 28' 13" WEST, A DISTANCE OF 18.00 FEET TO THE EAST LINE OF LOT 3 OF CHUBBICK AND STEVENSON 1ST, POTTAWATTAMIE COUNTY, IOWA, THENCE NORTH 01° 34' 09" EAST ALONG THE EAST LINE OF CHUBBICK AND STEVENSON 1ST, A DISTANCE OF 910.31 FEET; THENCE NORTH 88° 54' 30" EAST, A DISTANCE OF 49.04 FEET; THENCE SOUTH 73° 43' 02" EAST ALONG THE SOUTH LINE OF LOTS 121 AND 122 OF WHISPERING OAK, A DISTANCE OF 141.53 FEET; THENCE SOUTH 85° 16' 22" EAST ALONG THE SOUTH LINE OF LOTS 122 AND 123 TO THE WEST RIGHT OF WAY LINE OF FOREST GLEN DRIVE ALSO THE SOUTHEAST CORNER OF LOT 123 OF WHISPERING OAKS, A DISTANCE OF 148.50 FEET; THENCE SOUTHERLY ALONG A NON-TANGENTIAL CURVE TO THE LEFT WITH A RADIUS OF 355.00 FEET, A CENTRAL ANGLE OF 03° 56' 55", CHORD BEARING OF SOUTH 03° 30' 45" WEST, A CHORD LENGTH OF 23.08 FEET, A DISTANCE OF 23.08 FEET ALONG THE WEST RIGHT OF WAY LINE OF FOREST GLEN DRIVE, THENCE SOUTH 01° 32' 15" WEST ALONG THE WEST 34° 04" EAST, A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING.

SAID SUBDIVISION CONTAINS 15.80 ACRES AND IS SUBJECT TO EASEMENTS OF RECORD

**SURVEYOR'S CERTIFICATION**

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A FULLY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

[Signature]  
(SIGNATURE)  
PRINTED OR TYPED NAME: DANIEL L. MARTI  
LICENSE NUMBER: 22021  
MY LICENSE RENEWAL DATE IS: DECEMBER 31, 2017

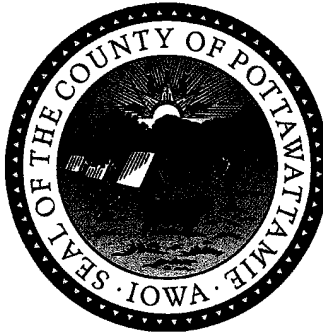
PAGES OR SHEETS COVERED BY THIS SEAL:  
1-2



State of Iowa - General Notary  
By [Signature]  
My Commission Expires  
September 27, 2020

# 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



Kristi Everett, First Deputy - Elections  
Linda Swolley - Real Estate  
Rebecca Belt, First Deputy - Tax and  
Finance  
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 II

  
Signed

12-5-2017  
Date

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

(712)-325-0888  
FAX (712)-325-0894

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 Heithoff  
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-754333304002	=	\$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.

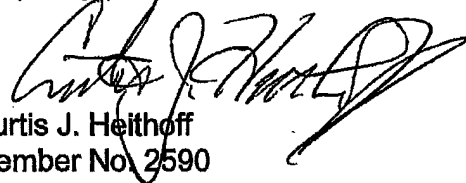
11. To convey its undivided 1/3 interest in the subject real estate Sandra Hamilton, Trustee of the Sandra Hamilton Revocable Trust created under Declaration of Trust dated June 1, 1988, as amended, must execute a Trustee Warranty Deed to B.H.I. Properties, Inc., a Nebraska corporation, which Trustee 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. Heithoff  
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 17-228 and proof of publication are the same that appears as record in this  
office.

Witness my hand and seal of Council Bluffs, Iowa,

this 30<sup>th</sup> day of November, 2017

  
\_\_\_\_\_  
Jodi Quakenbush  
City Clerk of the City of Council Bluffs

=====



**RESOLUTION NO. 17-228**

**A RESOLUTION GRANTING FINAL PLAT APPROVAL OF A 27-LOT RESIDENTIAL SUBDIVISION TO BE KNOWN AS WHISPERING OAKS PHASE II.**

**WHEREAS,** T S Development, LLC, represented by Charles Huddleston of Schemmer Associates, Inc., has submitted a request for final plat approval for 27-lot residential subdivision to be known as Whispering Oaks Phase II; and

**WHEREAS,** The proposed subdivision totals 11.28 acres in size and is located west of Franklin Avenue and north of Greenview Road, legally described as: A TRACT OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5 TOWNSHIP 74 RANGE 43 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA; and

**WHEREAS,** The proposed subdivision is generally consistent with the Whispering Oaks preliminary plan passed and approved by the Council Bluffs City Council on October 27, 2014 by Resolution No. 14-286; and

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

1. All proposed lots comply with minimum R-1/Single-Family Residential District lot dimensions and size requirements. Proposed Lots 144 through 150 abut a 20 foot-wide strip of unincorporated land that runs parallel to Greenview Road. The applicant's engineer stated this strip of land will be used as a landscape buffer between the residential dwellings and Greenview Road. For zoning setback purposes, the land area for proposed Lots 144 through 150 that abuts said 20 foot-wide strip of unincorporated land shall be considered a rear yard.
2. Two new cul-de-sacs (River Birch Court and Linden Court) and an extension of Forest Glen Drive will be dedicated to the City of Council Bluffs with the final plat. All proposed lots will have direct access to either River Birch Court or Linden Court.
3. The subdivision's legal description includes a 20' x 102.52' segment of the new Forest Glen Drive extension that interconnects with Greenview Road. This segment of Forest Glen Drive is not located within the City's jurisdictional boundary and shall be excluded from the subdivision.
4. The unplatted land abutting proposed Lots 129 through 144 will function as a stormwater management feature for the Whispering Oaks Phase II subdivision. This unplatted area shall be identified as an outlot and all maintenance/ownership of said outlot shall be dedicated to the Whispering Oaks Homeowners Association on the final plat. The unplatted land to the abutting south of proposed Lots 144 through 150 is not located within the City's jurisdictional boundary and shall be excluded from the subdivision.

5. 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.
6. MidAmerican Energy stated the applicant is reviewing their agreement to provided electrical distribution facilities and streetlights within the proposed subdivision. The applicant shall enter into an agreement with MidAmerican Energy to provide electrical distribution facilities and streetlights within the proposed subdivision prior to executing the final plat.
7. The Council Bluffs Public Works Department provided the following comments:
  - a. A cost estimate must be established and agreed upon for all unfinished work. The applicant shall provide an escrow account, bond or letter of credit for the agreed upon cost estimate for all unfinished work in the subdivision.
  - b. All sidewalks adjacent to outlots must be built or accounted for in the established cost estimate.
  - c. Water quality and quantity features shall be dedicated to a homeowners association with an approved operations and maintenance guidance document included.
  - d. The overall sediment and erosion control plan must be modified to include plans to incorporate the individual lot build conditions. This plan must be approved by Public Works.
  - e. Forest Glen Drive shall be accessed controlled with rights dedicated to the City of Council Bluffs on the final plat.
  - f. The new Forest Glen Drive extension must connect to Greenview Road.
8. 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.
9. A copy of the any private easements/covenants shall be provided to the City and recorded with the final plat.
10. The following technical corrections shall be made to the final plat prior to being executed:
  - a. Sheet 1 of 2 – Revise the County Auditor’s name to state Melvyn Houser.
  - b. Sheet 2 of 2:
    - i. Change the year in the “Owners Certificate paragraph” from 2015 to 2017.
    - ii. State “The Honorable Matthew J. Walsh, Mayor”
    - iii. Remove the period (.) after the first name of the Community Development Director (Brandon Garrett).

- iv. Include an apostrophe in the word "Treasurer's" in the County Treasurer's Certificate label
- v. Revise the third sentence of the Standard Utility Easement paragraph to specify maintenance of all drainage easement being the responsibility of the Whispering Oaks Homeowners Association. This would include the utility easements between Lots 129 & 130 and Lots 141 & 142.
- vi. Place a colon symbol after "Duty to Repair" in the dedication paragraph.
- vii. Remove notes A, B and C under "Owner does hereby reserve onto itself..." as these utilities easements are not located in this subdivision phase.
- viii. Change the date in "Acknowledgment to Dedication" from 2015 to 2017.
- ix. Revise the subdivision's legal description to exclude the 20' x 102.52' segment of the new Forest Glen Drive and include in the legal description the new outlot that will abuts Lots 129 through 144; and

**WHEREAS,** The Community Development Department recommends final plat approval of a 27-lot residential subdivision to be known as Whispering Oaks Phase II, 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 27-lot residential subdivision to be known as Whispering Oaks Phast II as legally described above, is hereby approved subject to all local, state and federal regulations; and

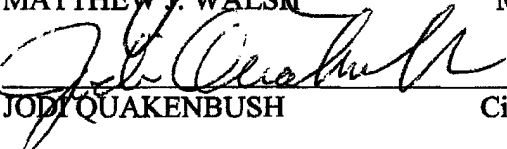
**BE IT FURTHER RESOLVED**

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

ADOPTED  
AND  
APPROVED

October 23 2017

  
\_\_\_\_\_  
MATTHEW J. WALSKI Mayor

Attest:   
\_\_\_\_\_  
JODI QUAKENBUSH City Clerk

# PROOF OF PUBLICATION

STATE OF IOWA  
POTTAWATTAMIE COUNTY

I, Amy McKay, on my oath do solemnly swear that I am the Controller of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

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

The first publication thereof began on the 15th day of October, 2017

Signed in my presence by the said Amy McKay and by her sworn to before me this 16th day of October, A.D. 2017.

#### NOTICE OF PUBLIC HEARING

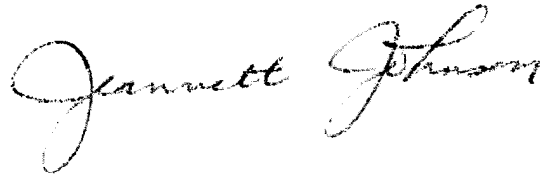
##### TO WHOM IT MAY CONCERN:

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 T S Development, LLC for final plat approval of a 27-lot residential subdivision to be known as Whispering Oaks Phase II, legally described as being A TRACT OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5 TOWNSHIP 74 RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

You are further notified that a 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 23rd day of October, 2017 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.  
2017(10)15-1 Sunday

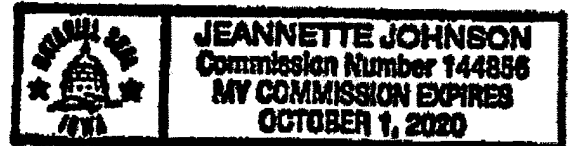


Amy McKay  
Daily Nonpareil Controller



Jeannette Johnson  
Notary Public

Filed this 16th day of October, A.D. 2017.  
Publication Cost: \$ 13.44



Customer Number: 35700  
Order Number: 20440108

**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 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 1 through 150, inclusive, and Outlot A, 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, outlot, 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 or Villa residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling or Villa residence 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.

## 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 divided into one hundred fifty (150) 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. VILLAS ASSOCIATION

1. The Association. Declarant shall cause the incorporation of the COUNCIL BLUFFS WHISPERING OAKS VILLAS ASSOCIATION, an Iowa not for profit corporation (hereinafter referred to as the "Villas Association"). The Villas Association shall solely affect the following lots:

Lots 1 through 24, inclusive, and Lots 61 through 79, inclusive, in Whispering Oaks, a subdivision, as surveyed, platted and recorded in Pottawattamie County, Iowa (the "Villa Lots").

The Villas Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Villa 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 and the maintenance and repair of the improvements to the Villa Lots as set forth herein. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; outlots; and signs, fencing and entrances for the Whispering Oaks Villas. Common Facilities may be situated on property owned or leased by the Villas Association, or on dedicated property or property subject to easements accepted by and benefiting the Villas Association.

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 and regulations are uniformly applicable to all Members. The rules and regulations may regulate, limit and restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who 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 the Whispering Oaks Villas; and the protection and maintenance of the residential character of the Whispering Oaks Villas.

2. Membership and Voting. The "Owner" of each Villa Lot shall be a Member of this Villas Association. For purposes of this Declaration, the term "Owner" of a Villa Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Villa Lot, but excluding however those parties having any interest in any of such Villa 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 Villa Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Villa Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Villa Lot, and may not be separated from ownership of each Villa Lot.

The Villas 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 Villa Lot owned. When there shall be more than one person or entity holding an interest in any Villa Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Villa 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 Villa Lot. It is understood that the Owner of each respective Villa 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 Villa Lot owned. For purposes herein, Declarant shall be considered the Owner of a Villa 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 Villas 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 Villas Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, may include but shall not be limited to the following:

A. The exterior maintenance, painting and insurance with respect to improvements constructed on the Villa Lots, grounds care, snow removal, and trash collection as generally described in Sections 13, 14, 15, and 16 of this Article.

B. The development, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

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 Villas Association funds to accomplish the purposes of the Villas Association including, but not limited to, payment for purchase of insurance covering any Common Facility or any improvement to a Villa Lot against property damage and casualty, and purchase of liability insurance coverages for the Villas Association, the Board of Directors of the Villas 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 Villas 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 Villas Association.

G. The deposit, investment and reinvestment of Villas 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 Villas Association in the performance of their duties and responsibilities for the Villas Association.

I. General administration and management of the Villas 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 Villas Association.

4. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Assessable Villa Lot and for each Owner of any Assessable Villa Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Villas Association:

- (1) Special assessments for capital improvements; and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Villa Lot as deemed necessary by the Villas Association;

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

5. Purpose or Assessments. The assessments levied upon the Villas Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents in the properties and for exterior maintenance, and other matters as more fully set out in Article III herein. Assessments shall be levied solely against an Assessable Villa Lot. Assessable Villa Lot shall mean and refer to any Improved Villa Lot which the Board of Directors of the Villas Association determines is entitled to the benefits for which assessments are levied by the Villas Association as provided in this instrument. An Improved Villa Lot shall mean and refer to any Villa Lot upon which shall be erected a dwelling, the construction of which shall be at least eighty percent (80%) constructed according to the plans and specifications for construction of said dwelling.

6. Monthly Assessments. The Board of Directors shall have the authority to levy and assess from time to time against any Assessable Villa Lot any monthly maintenance assessment for the purpose of meeting the requirements of this Article III for exterior maintenance, which assessments may not be equal for each Villa Lot or dwelling.

7. Special Assessment for Capital Improvements. The Villas Association may levy special assessments from time to time against a Villa Lot for the purpose of meeting the requirements of this Article III herein for the costs of any construction, reconstruction, repair or replacement of any capital improvements on such Villa Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the total Villa Lots and each Villa Lot Owner shall vote in person or by proxy at a meeting duly called for such purpose.

8. Notice and Quorum for Any Action Authorized Under this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article III shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes entitled to be cast by each Villa Lot shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum, at such subsequent meeting shall be ten percent (10%) of all the votes entitled to be cast. Any such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

9. Rate of Assessment. The monthly assessments shall be paid pro rata by the Owners of all Assessable Villa Lots based upon the total number of Assessable Villa Lots; provided, however, the Board of Directors of the Villas Association may equitably adjust such prorations if it determines that certain Assessable Villa Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied or the type of dwelling located on the Villa Lot requires an adjustment (i.e., a duplex dwelling or a detached single family dwelling). The monthly assessments may be collected on a monthly or other periodic basis by the Villas Association. The Board of Directors of the Villas Association shall fix the amount of the monthly or other periodic assessments against each Assessable Villa Lot. Written notice of the assessment shall be sent to every Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Villa Lot for which the costs of such construction, reconstruction, repair or replacement



of any capital improvements occurs. The Villas Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Villas Association, setting forth whether or not all assessments on a specified Assessable Villa Lot have been paid. A properly executed certificate of the Villas Association as to the status of assessments, on a particular Assessable Villa Lot shall be binding upon the Villas Association as of the date of its issue by the Villas Association.

10. Effect of Nonpayment of Assessment; Remedies of the Villas Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Iowa, which at the time of the execution of this Declaration, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Villas Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Villas Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Villa Lot.

11. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Villa Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Villas Association. Sale or transfer of any Villa Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Villas Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Villa Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Villas Association. No mortgagee shall be required to collect any assessments due. The Villas Association shall have the sole responsibility to collect all assessments due.

12. 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 Villa Lot, and shall abate all dues and assessments due in respect of any Villa Lot during the period such Villa Lot is owned by the Declarant.

13. Monthly Assessments. Monthly assessments may be assessed for, but not limited to, the following:

A. Care and maintenance of trees and shrubs, lawns, entrance features and signs, and other exterior landscaping improvements as originally installed by the Declarant or builder, except such improvements as may be within the confines of any fenced in area on any Assessable Villa Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner. The Owner understands that the original landscape as installed by the Declarant or builder is warranted for a period of one year from the time of planting. The Owner is responsible for replacement of all dead landscaping improvements after the one year warranty period expires and the Owner agrees to allow the Villas Association to replace such dead landscape improvements at the expense of the Owner of record at the time of replacement and the Owner shall reimburse the Villas Association on demand.

B. Snow removal from drives, front walks and stoops only as to be determined by the guidelines set forth by the Board of Directors.

C. Trash removal, unless provided by local governmental authorities.

D. The Villas Association shall have no duty to repair, replace or maintain any exterior concrete surfaces, including walks, driveways, patios, foundations, doors, windows, and decks.

E. Reserves for replacements, repairs and maintenance as determined by the Board of Directors.

F. Maintenance of dedicated or nondedicated roads, paths, ways and Common Facilities.

14. Special Assessments. Special assessments may be assessed for, but not limited to, the following:

A. Maintenance, repair and replacement of roofs.

B. Maintenance, repair, including painting, of all exterior walls, with the exception that the Villas Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Villas Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditioning systems. However, the Villas Association shall assume the duty to paint the exterior surfaces of exterior doors.

C. Maintenance, repair and replacement of gutters.

D. Maintenance of dedicated or nondedicated roads, paths, ways and Common Facilities.

15. Party Walls. Party walls shall be constructed, maintained and repaired as follows:

A. General Rules of Law to Apply. Each wall which is built as part of the original construction of any dwelling upon a Villa Lot, and which is placed on the dividing line between any adjoining Villa Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance. The cost of reasonable repairs and maintenance of any party wall shall be shared by the Owners who make use of such party wall in proportion to the length of each Villa Lot and party wall.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner or Owners shall thereafter make use of such party wall, such other Owner or Owners shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner or Owners to call for a larger contribution from other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and repair of damage caused by the elements.

E. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each Owner involved shall choose one arbitrator, and such arbitrators

shall choose one additional arbitrator, and all Owners shall be bound by any decision arrived at by a majority of all such arbitrations. Arbitration shall be governed by the terms of the Uniform Arbitration Act, to the extent consistent with the foregoing provisions.

16. Insurance. Insurance may be required as follows:

A. The Villas Association may but shall not be obligated to, purchase and provide physical property coverage insurance with respect to the improvements (residential and related structures) in any amount equal to at least ninety percent (90%) of the full replacement value of the original improvements against losses by fire, lightning, wind storm and other perils covered by standard extended coverage endorsements. The full replacement value of the original improvements is defined as the base price of the original structure excluding, but not limited to, custom finished basements and any other improvements over the base original price. Insurance premiums are assessed uniformly based upon the base price of the original structures. Betterments done to the original structure and additional custom improvements shall not be covered by the Villas Association's policy. The intent is to provide only coverage based only upon the basic purchase price excluding any custom betterments.

The Villas Association shall also purchase and provide comprehensive general liability coverage insurance against any other hazards and in such amounts as shall be determined from time to time by the Board of Directors of the Villas Association. The Villas Association, in addition to the foregoing, shall provide Directors and Officers liability coverage insurance for the Villas Association, for its Officers, and members of the Board of Directors. Finally, if the Villas Association has any employees of any nature, the Villas Association shall purchase and provide Workers' Compensation Insurance for all employees who may come within the scope of Iowa Workers' Compensation laws.

The above insurance shall not cover the personal property of any Owner of any Villa Lot, it being the Owner's responsibility to provide such insurance coverage for the Owner's protection. In addition, the Villas Association may purchase such additional insurance against other hazards which may be deemed appropriate by the Board of Directors.

B. The Villas Association is hereby irrevocably appointed as agent for each Owner of each and every Villa Lot and for the holder of any mortgage on any Villa Lot, to adjust any and all claims arising under insurance policies purchased by the Villas Association on the improvements on the Villa Lots, joinder by any such Owner or mortgagee. All insurance proceeds shall be applied by the Villas Association toward repairing the damage covered by such insurance, provided that reconstruction or repair shall not be compulsory where the damage exceeds two-thirds (2/3) of the value of all the buildings and improvements on all of the Villa Lots covered by such insurance.

The deductible portion of the applicable master insurance policy shall be borne equally by those Villa Lots which have suffered the loss. Should the Owners so elect not to rebuild, the insurance proceeds, along with the insurance indemnity, if any, shall be credited to each Owner in accordance with such Owner's pro rata share of the loss as sustained from the casualty for which the proceeds shall be payable. Such sums shall be first applied towards satisfaction of any recorded first mortgage, first deed of trust, initial purchase money security device against such Villa Lots, next applied towards satisfaction of junior recorded liens in order of their priority, next toward the cost of razing the improvements or any remnants thereof from said properties, and the filling and leveling of any of said Villa Lots, as needed, and the remainder shall then be paid to such Owners of such razed properties on a pro rata basis.

In case the insurance proceeds do not equal the cost of repairs or rebuilding, the excess cost shall be considered a maintenance expense to be assessed and collected by the Villas Association from the Owner of the damaged improvements. In any case of over insurance, any excess proceeds of insurance received shall be credited towards the working fund of the Villas Association.

C. Each Villa Lot Owner may obtain such additional insurance for the individual Owner's benefit and at such Owner's own expense as may be deemed necessary by the Villa Lot Owner, including coverage for specific improvements and betterments in the Owner's unit, personal liability, specific personal property items, the ten percent (10%) co-insurance provision of the full replacement cost of the base price of the original structure, and any exclusions of insurance coverage from the master policy provided by the Villas Association.

17. Access. The Villas Association, its officers, employees and agents, contractors and repairmen designated by the Villas Association, shall have the right to go on any Villa Lot for the purpose of performing the duties of the Villas Association hereunder, and the Villas Association is hereby granted a specific easement for such purposes.

18. Utility Meters and Service Lines. In order to facilitate the installation, operation, maintenance and repair of an underground watering system, such Villa Lots as shall be designated from time to time by the Villas Association shall have a dual metering system for water so as to permit the drawing of water for watering of the lawns, shrubs, trees and other vegetation located upon the Villa Lots. It is understood that the amount of water metered for the residential use on any such Villa Lot shall be paid for by the Owner of each Villa Lot receiving water, and the Owner shall be responsible for the meter servicing solely the Owner's Villa Lot. Utility meters may be located within the Owner's residence.

#### ARTICLE IV. 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 which is filed in the office of the Pottawattamie County, Iowa Recorder as Instrument No. \_\_\_\_\_ and the final plat for Whispering Oaks Phase II filed as Instrument No. \_\_\_\_\_.

ARTICLE V.  
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. Invalidity 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 \_\_\_\_ day of December, 2017.

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 7<sup>th</sup> day of December, 2017, by GERALD L. TORCZON, Manager of TS DEVELOPMENT, LLC, an Iowa limited liability company, on behalf of the company.

*Mary Jayne Throener*  
Notary Public

State of Nebraska - General Notary  
MARY JAYNE THROENER  
My Commission Expires  
September 27, 2020