

DATE PLOTTED: 10/27/2014 9:47 AM

FILENAME: L:\07167\_FOX RUN LANDING - PHASE III\CSD PROJECT\Engineering\dwg\FINAL PLAT\0601-FINAL PLAT.dwg

R FEE \$ 320.00 RMA \$ 00  
A FEE \$ ECOM \$ 00  
T TAX \$



2014-15604  
RECORDER JOHN SCORTIZO  
POTTAWATTAMIE COUNTY, IA  
FILE TIME: 12/24/2014 10:30:50 AM  
REC: 230.00400-T TAX:  
RMA: 1.00ECM: 1.00

PREPARED BY: MELVIN G. SAMPLES, HGM ASSOCIATES, INC., 640 FIFTH AVENUE, COUNCIL BLUFFS, IOWA 51502 (712) 323-0530

LOT	S.F.	ACRES
1	16,440 S.F.	0.377'
2	12,791 S.F.	0.294'
3	12,790 S.F.	0.294'
4	15,568 S.F.	0.357'
5	12,786 S.F.	0.294'
6	13,711 S.F.	0.315'
7	13,709 S.F.	0.315'
8	12,781 S.F.	0.293'
9	12,780 S.F.	0.293'
10	13,750 S.F.	0.316'
11	13,749 S.F.	0.316'
12	15,551 S.F.	0.357'
13	12,773 S.F.	0.293'
14	12,772 S.F.	0.293'
15	13,695 S.F.	0.314'
16	8,510 S.F.	0.195'
17	7,358 S.F.	0.169'
18	5,994 S.F.	0.138'
19	5,916 S.F.	0.138'
20	7,222 S.F.	0.166'
21	7,323 S.F.	0.168'
22	6,181 S.F.	0.142'
23	6,010 S.F.	0.138'
24	7,189 S.F.	0.165'
25	8,081 S.F.	0.186'
26	6,038 S.F.	0.139'
27	6,276 S.F.	0.144'
28	8,374 S.F.	0.192'
29	8,510 S.F.	0.195'
30	6,110 S.F.	0.140'
31	6,854 S.F.	0.157'
32	7,685 S.F.	0.176'
33	19,890 S.F.	0.457'
34	14,219 S.F.	0.326'
35	11,789 S.F.	0.271'
36	9,867 S.F.	0.227'
37	11,293 S.F.	0.259'
38	14,323 S.F.	0.329'
39	11,387 S.F.	0.261'
40	11,807 S.F.	0.271'
41	9,720 S.F.	0.223'
42	9,473 S.F.	0.217'
43	11,507 S.F.	0.264'
44	16,992 S.F.	0.390'
45	16,510 S.F.	0.425'
46	15,100 S.F.	0.347'
47	11,918 S.F.	0.274'
48	11,007 S.F.	0.253'
49	13,065 S.F.	0.300'
50	8,905 S.F.	0.204'
51	8,905 S.F.	0.204'
52	8,905 S.F.	0.204'
53	10,790 S.F.	0.248'
54	8,905 S.F.	0.204'
55	8,905 S.F.	0.204'
56	8,905 S.F.	0.204'
57	8,905 S.F.	0.204'
58	10,790 S.F.	0.248'
59	8,905 S.F.	0.204'
60	8,905 S.F.	0.204'
61	10,790 S.F.	0.248'
62	8,905 S.F.	0.204'
63	12,104 S.F.	0.278'

LOT	S.F.	ACRES
OUTLOT 1	107,379 S.F.	2.465'
OUTLOT 2	3,794 S.F.	0.087'
OUTLOT 3	6,769 S.F.	0.155'
MIDDLE FERRY ROAD R-0-W	112,921 S.F.	2.592'
CROGAN'S WAY R-0-W	9,000 S.F.	0.207'

**LEGAL DESCRIPTION:**

ALL OF LOT 38, THE SEVEN AT FOX RUN LANDING, A SUBDIVISION IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, AS RECORDED IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER IN BOOK 106, AT PAGE 20865.

SAID LOT CONTAINS AN AREA OF 21.130 ACRES, MORE OR LESS.

**NOTE:**

A 5.00 FOOT WIDE PERMANENT EASEMENT ON EACH SIDE OF ALL SIDE LOT LINES, A 10.00 FOOT WIDE PERMANENT EASEMENT ALONG ALL FRONT LOT LINES, AND A 5.00 FOOT WIDE PERMANENT EASEMENT ALONG ALL REAR LOT LINES, ARE RESERVED FOR THE INSTALLATION AND MAINTENANCE OF UTILITIES.

**OWNERS/DEVELOPERS:**

92 INVESTMENTS, LLC  
ROBERT MCCARTHY  
P.O. BOX 683  
AVOCA, IOWA 51521.

**PROPRIETOR'S STATEMENT:**

KNOW ALL PERSONS BY THESE PRESENTS THAT 92 INVESTMENTS, 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 1 THROUGH 63, INCLUSIVE, OUTLOT 1 THROUGH 3 INCLUSIVE, AND PUBLIC STREET RIGHT-OF-WAY FOR AN EXTENSION OF MIDDLE FERRY ROAD AND AN EXTENSION OF CROGAN'S WAY ROAD. SAID PROPERTY TO BE KNOWN AS FOX RUN LANDING SUBDIVISION - PHASE III. SAID 92 INVESTMENTS, LLC DOES HEREBY DEDICATE TO THE CITY OF COUNCIL BLUFFS, IOWA, THE RIGHT-OF-WAY FOR AN EXTENSION OF MIDDLE FERRY ROAD (2.592 ACRES, MORE OR LESS) AND AN EXTENSION OF CROGAN'S WAY ROAD (0.207 ACRES, MORE OR LESS).

AS PART OF THIS PLATTING, LOTS 17 THROUGH 32 INCLUSIVE AND OUTLOT 1 SHALL BECOME "CLUSTER LOTS" AS PERMITTED BY CHAPTER 14.10 OF THE MUNICIPAL SUBDIVISION CODE.

AS PART OF THIS PLATTING, 92 INVESTMENTS, LLC DOES HEREBY DEDICATE OUTLOT 1 TO A NEW HOME OWNERS' ASSOCIATION TO BE FORMED BY CLUSTERED LOTS 17 THROUGH 32 INCLUSIVE. ADDITIONALLY, OWNERS OF LOTS 1 THROUGH 34 INCLUSIVE SHALL JOIN THE EXISTING HOME OWNERS' ASSOCIATION FORMED BY OWNERS OF LOTS WITHIN "THE SEVEN AT FOX RUN LANDING SUBDIVISION".

AS PART OF THIS PLATTING, 92 INVESTMENTS, LLC DOES HEREBY DEDICATE OUTLOTS 2 AND 3 TO THE EXISTING HOME OWNERS' ASSOCIATION FORMED BY OWNERS OF LOTS WITHIN "FOX RUN LANDING SUBDIVISION". ADDITIONALLY, OWNERS OF LOTS 35 THROUGH 63 INCLUSIVE SHALL JOIN SAID EXISTING HOME OWNERS' ASSOCIATION FORMED BY OWNERS OF LOTS WITHIN "FOX RUN LANDING SUBDIVISION".

AS PART OF THIS PLATTING, 92 INVESTMENTS, 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 NONEXCLUSIVE EASEMENTS FOR THE PURPOSE OF CONVEYING OVERLAND STORM DRAINAGE AND CONSTRUCTING, RECONSTRUCTING, REPAIRING, ENLARGING AND MAINTAINING STORM SEWERS TOGETHER WITH NECESSARY APPURTENANCES THERETO IN, 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 GRANTOR'S 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 GRANTEE'S USE OF THE EASEMENT AREA UNDER THE RIGHTS OF THIS AGREEMENT.

FOR LOTS 1, 34, 35, 36, 46, 47, 48, 62, AND 63: THE MINIMUM THRESHOLD ELEVATION FOR WINDOW-WELL, TOP SILL, AND/OR DOOR, WINDOW, OR ANY OTHER EXTERIOR OPENINGS INTO THE HOUSE STRUCTURE SHALL BE 973.0 FEET. ALL OTHER LOTS SHALL BE SLAB-ON-GRADE CONSTRUCTION WITH A MINIMUM FLOOR ELEVATION OF 973.0 FEET. MINIMUM ELEVATIONS MAY BE MODIFIED UPON SUBMITTAL OF A REQUEST AND RECEIPT OF AN APPROVAL, BY AND AT THE DISCRETION OF THE CITY OF COUNCIL BLUFFS PUBLIC WORKS DEPARTMENT, ON A LOT BY LOT BASIS. THE STATED MINIMUM ELEVATION IS REFERENCED TO THE ORIGINAL DESIGN DOCUMENTS FOR THIS SUBDIVISION AND THIS PLAT. PLEASE OBTAIN COPIES OF SAID DOCUMENTS, ON FILE WITH THE CITY OF COUNCIL BLUFFS PUBLIC WORKS DEPARTMENT, PRIOR TO FINAL LOCATION AND ELEVATION DETERMINATION FOR CONSTRUCTION. THE INTENT OF THE STATED ELEVATION MINIMUMS IS TO LESSEN THE POSSIBILITY OF SURFACE WATER ENTERING THE STRUCTURE.

GROUNDWATER IS A SEPARATE ISSUE THAT IS NOT ADDRESSED BY THE MINIMUM ELEVATION RESTRICTIONS, BUT SHOULD BE EVALUATED IF BASEMENTS ARE CONSIDERED (WHERE PERMITTED). THE FOREGOING ELEVATION LANGUAGE MAY ALSO BE FOUND IN THE PORTION OF THE COVENANTS AND RESTRICTIONS FOR THIS SUBDIVISION AS IT PERTAINS TO THESE LOTS.

SAID STORM SEWER AND DRAINAGE EASEMENTS SHALL BE ACROSS THE ENTIRETY OF OUTLOTS 1 THROUGH 3 INCLUSIVE, AND ACROSS LOTS 1-16, LOTS 28 AND 29, LOTS 35-46, AND LOTS 49-63, ALL INCLUSIVE, AS SHOWN AND DIMENSIONED HEREON.

AS PART OF THIS PLATTING, 92 INVESTMENTS, LLC DOES HEREBY DEDICATE TO THE CITY OF COUNCIL BLUFFS, IOWA ALL RIGHTS OF DIRECT VEHICULAR ACCESS FROM LOTS 1 THROUGH 15 INCLUSIVE ONTO 55th AVENUE.

AS PART OF THIS PLATTING, 92 INVESTMENTS, LLC REQUESTS THAT 128 SQUARE FEET OF EXISTING MIDDLE FERRY ROAD RIGHT-OF-WAY BE VACATED AS DETAILED ON SHEET 2 OF 3.

# FINAL PLAT OF FOX RUN LANDING - PHASE III

## LOTS 1 THROUGH 63 INCLUSIVE (WITH LOTS 17-32 CLUSTERED AS PERMITTED)

BEING A REPLAT OF LOT 38 OF "THE SEVEN AT FOX RUN LANDING"  
IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

**CITY COUNCIL**

APPROVED BY MAYOR: Matthew Walsh 12/19/14  
DATE

**ATTESTED TO BY:**

Marcia L. Worden 12/19/2014  
DATE

CITY CLERK: MARCIA L. WORDEN DATE  
COMMUNITY DEVELOPMENT DIRECTOR: DONALD D. GROSS DATE

**CERTIFICATE OF TREASURER OF POTTAWATTAMIE COUNTY, IOWA**

I, THE TREASURER OF POTTAWATTAMIE COUNTY, IOWA, HEREBY CERTIFY THAT THE PROPERTY INCLUDED IN FOX RUN LANDING SUBDIVISION - PHASE III IS FREE FROM CERTIFIED TAXES AND CERTIFIED SPECIAL ASSESSMENTS.

Lea A. Voss 11-13-14  
TREASURER OF POTTAWATTAMIE COUNTY, IOWA: LEA A. VOSS DATE

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/OR 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.

IN WITNESS THEREOF, I DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF 92 INVESTMENTS, LLC'S PROPERTY AS CONTAINED HEREIN ON THIS

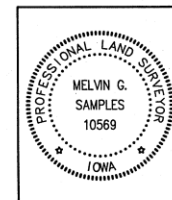
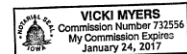
3<sup>rd</sup> DAY OF October, 2014.

BY: Robert P. McCarthy  
ROBERT P. MCCARTHY

STATE OF IOWA }  
COUNTY OF POTTAWATTAMIE } SS.

ON THIS 3<sup>rd</sup> DAY OF October, 2014, BEFORE ME A NOTARY PUBLIC IN AND FOR THE STATE OF IOWA, PERSONALLY APPEARED ROBERT P. MCCARTHY, TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, DID SAY HE IS ONE OF THE MEMBERS OF 92 INVESTMENTS, LLC, THAT NO SEAL HAS BEEN PROCURED BY SAID LIMITED LIABILITY COMPANY, AND THAT SAID INSTRUMENT WAS SIGNED ON BEHALF OF SAID LIMITED LIABILITY COMPANY BY AUTHORITY OF ITS MEMBERS AND THE SAID ROBERT P. MCCARTHY ACKNOWLEDGED THE EXECUTION OF THE INSTRUMENT TO BE THE VOLUNTARY ACT AND DEED OF SAID LIMITED LIABILITY COMPANY BY IT VOLUNTARILY EXECUTED.

Vicki Myers  
NOTARY PUBLIC IN AND FOR SAID STATE  
MY COMMISSION EXPIRES 1-24-17



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

Melvin G. Samples OCTOBER 2, 2014  
DATE  
LICENSE NUMBER 10569  
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2014  
PAGES OR SHEETS COVERED BY THIS SEAL:  
SHEETS 1, 2, AND 3 OF 3

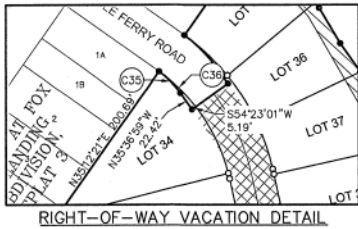
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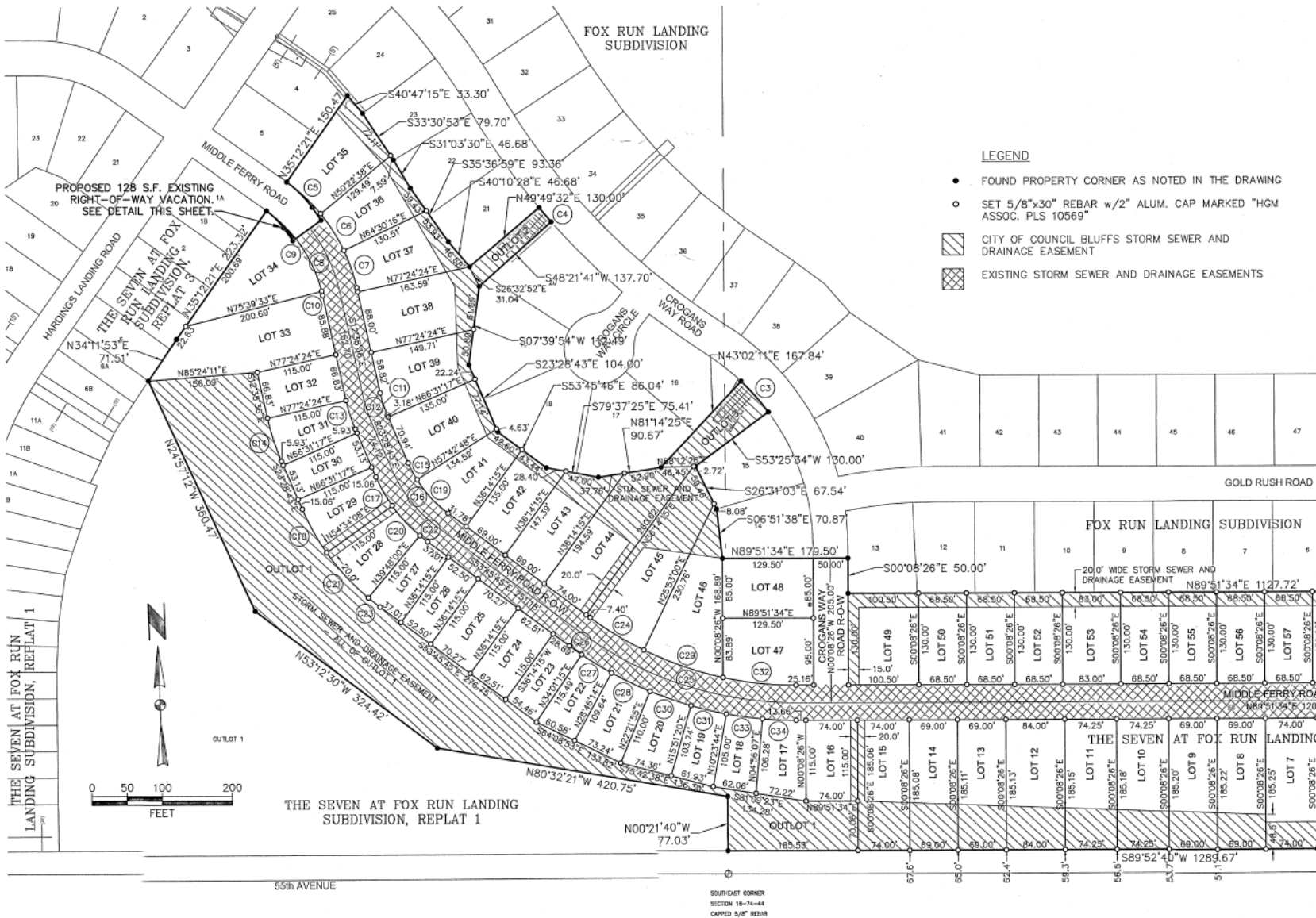
FOX RUN SUBDIVISION - PHASE III  
A PROPOSED SUBDIVISION IN COUNCIL BLUFFS, IOWA  
92 INVESTMENTS, LLC  
P.O. BOX 683, AVOCA, IOWA 51521  
FINAL PLAT

project no. 106014  
sheet 1 OF 3



**LEGAL DESCRIPTION OF REQUESTED VACATION:**

- A PORTION OF THE EXISTING MIDDLE FERRY ROAD RIGHT-OF-WAY AS DEDICATED WITH THE PLATTING OF THE SEVEN AT FOX RUN LANDING SUBDIVISION IN COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
- BEGINNING AT THE EASTERLY MOST CORNER OF LOT 1A AS PLATTED IN THE SEVEN AT FOX RUN LANDING, REPLAT THREE; SAID CORNER BEING A POINT ON THE EXISTING AND PROPOSED SOUTHWESTERLY RIGHT-OF-WAY LINES OF SAID MIDDLE FERRY ROAD, AND THE BEGINNING OF A 200.69 FOOT RADIUS CURVE TO WHICH A RADIAL LINE BEARS NORTH 35 DEGREES 12 MINUTES 21 SECONDS EAST;
  - THENCE SOUTHEASTERLY ALONG SAID CURVE AND THE PROPOSED SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID MIDDLE FERRY ROAD, THROUGH AN ANGLE OF 16 DEGREES 24 MINUTES 45 SECONDS, A DISTANCE OF 57.49 FEET TO A POINT AT THE TERMINATION OF SAID EXISTING RIGHT-OF-WAY;
  - THENCE ALONG SAID TERMINATION LINE, SOUTH 54 DEGREES 23 MINUTES 01 SECOND WEST, 5.19 FEET TO A POINT ON SAID EXISTING SOUTHWESTERLY RIGHT-OF-WAY LINE;
  - THENCE NORTHWESTERLY, ALONG SAID EXISTING RIGHT-OF-WAY LINE NORTH 35 DEGREES 36 MINUTES 59 SECONDS WEST, 22.42 FEET TO A POINT ON A 102.97 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY;
  - THENCE ALONG SAID CURVE AND SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 34.47 FEET TO THE POINT OF BEGINNING.
  - SAID PORTION CONTAINS AN AREA OF 128 SQUARE FEET, MORE OR LESS.



I, the undersigned, being a duly licensed Professional Engineer in the State of Iowa, do hereby certify that I am the author of the foregoing plat and that it was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer in the State of Iowa.

**hgm ASSOCIATES INC.**  
 640 FIFTH AVENUE COUNCIL BLUFFS, IA  
 PHONE: 712-333-0330

BLS draw  
 BLS design  
 MCS design  
 SEP 14  
 10/14 revision

**FOX RUN SUBDIVISION - PHASE III**  
 A PROPOSED SUBDIVISION IN COUNCIL BLUFFS, IOWA  
 project client sheet  
 92 INVESTMENTS L.L.C.  
 P.O. BOX 683, AVOCA, IOWA 51521

project no. 106014  
 sheet 2 OF 3

CURVE TABLE				
NO.	LENGTH	RADIUS	DELTA	CHORD
C1	98.41'	630.00'	008°57'09"	98.31'
C2	41.52'	270.00'	008°48'41"	41.48'
C3	58.64'	323.39'	010°23'22"	58.56'
C4	26.65'	1042.88'	001°27'51"	26.65'
C5	66.38'	250.69'	015°10'17"	66.19'
C6	61.81'	250.69'	014°07'38"	61.65'
C7	56.45'	250.69'	012°54'09"	56.33'
C8	100.37'	225.69'	025°28'55"	99.55'
C9	141.70'	200.69'	040°27'12"	138.77'
C10	6.12'	200.69'	001°44'51"	6.12'
C11	33.25'	175.00'	010°53'07"	33.20'
C12	38.00'	200.00'	010°53'07"	37.94'

CURVE TABLE				
NO.	LENGTH	RADIUS	DELTA	CHORD
C13	42.75'	225.00'	010°53'07"	42.68'
C14	64.59'	340.00'	010°53'07"	64.50'
C15	26.90'	175.00'	008°48'30"	26.88"
C16	105.71'	200.00'	030°17'03"	104.49'
C17	46.94'	225.00'	011°57'09"	46.85'
C18	70.93'	340.00'	011°57'09"	70.80'
C19	65.59'	175.00'	021°28'33"	65.21'
C20	58.00'	225.00'	014°46'08"	57.84'
C21	87.64'	340.00'	014°46'08"	87.40'
C22	13.99'	225.00'	003°33'45"	13.99'
C23	21.14'	340.00'	003°33'45"	21.14'
C24	89.57'	495.66'	010°21'14"	89.45'

CURVE TABLE				
NO.	LENGTH	RADIUS	DELTA	CHORD
C25	330.57'	520.66'	036°22'41"	325.05'
C26	21.11'	545.66'	002°13'00"	21.11'
C27	50.00'	545.66'	005°15'01"	49.98'
C28	61.00'	545.66'	006°24'19"	60.97'
C29	120.00'	495.66'	013°52'17"	119.71'
C30	62.00'	545.66'	006°30'36"	61.96'
C31	52.00'	545.66'	005°27'36"	51.98'
C32	105.13'	495.66'	012°09'10"	104.93'
C33	52.00'	545.66'	005°27'37"	51.98'
C34	48.34'	545.66'	005°04'33"	48.32'
C35	34.47'	102.97'	019°10'40"	34.31'
C36	57.49'	200.69'	016°24'45"	57.29'

**LEGEND**

- FOUND PROPERTY CORNER AS NOTED IN THE DRAWING
- SET 5/8"x30" REBAR w/2" ALUM. CAP MARKED "HGM ASSOC. PLS 10569"
- ▨ CITY OF COUNCIL BLUFFS STORM SEWER AND DRAINAGE EASEMENT
- ▩ EXISTING STORM SEWER AND DRAINAGE EASEMENTS

**EASEMENT SUMMARY:**

PERMANENT STORM SEWER AND DRAINAGE EASEMENTS -

- ALL OF OUTLOTS 1, 2, AND 3.
- A 38.0' WIDE STRIP ALONG THE SOUTH LINES OF LOTS 1 THRU 7.
- A TAPERED STRIP ALONG THE SOUTH LINES OF LOTS 8 THRU 15 AS SHOWN AND DIMENSIONED HEREON.
- A 10.0' WIDE STRIP ALONG THE WEST LINE OF LOT 15 AND THE EAST LINE OF LOT 16.
- A 10.0' WIDE STRIP ALONG THE NORTHWEST LINE OF LOT 28 AND THE SOUTHEAST LINE OF LOT 29.
- A 15.0' WIDE STRIP ALONG THE WEST LINE OF LOT 49.
- A 20.0' WIDE STRIP ALONG THE NORTH LINES OF LOTS 49 THRU 63.
- AN IRREGULAR TRACT ALONG THE REAR LOT LINES OF LOTS 35 THRU 46 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 14 IN THE FOX RUN LANDING SUBDIVISION, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA;

THENCE NORTH 82 DEGREES 05 MINUTES 27 SECONDS WEST, 125.66 FEET;

THENCE NORTH 53 DEGREES 45 MINUTES 45 SECONDS WEST, 261.72 FEET;

THENCE NORTH 22 DEGREES 59 MINUTES 05 SECONDS WEST, 109.29 FEET;

THENCE NORTH 01 DEGREE 57 MINUTES 19 SECONDS WEST, 113.29 FEET;

THENCE NORTH 30 DEGREES 22 MINUTES 30 SECONDS WEST, 198.23 FEET;

THENCE NORTH 41 DEGREES 54 MINUTES 46 SECONDS WEST, 104.29 FEET TO A POINT ON THE EAST LINE OF LOT 4 IN THE SEVEN AT FOX RUN LANDING SUBDIVISION;

THENCE ALONG SAID EAST LINE, NORTH 35 DEGREES 12 MINUTES 21 SECONDS EAST, 28.49 FEET TO A POINT ON THE SOUTHWEST BOUNDARY OF SAID FOX RUN LANDING SUBDIVISION;

THENCE SOUTHEASTERLY ALONG SAID BOUNDARY THE FOLLOWING FIVE COURSES:

- SOUTH 40 DEGREES 47 MINUTES 15 SECONDS EAST, 33.30 FEET;
- SOUTH 33 DEGREES 30 MINUTES 53 SECONDS EAST, 79.70 FEET;
- SOUTH 31 DEGREES 03 MINUTES 30 SECONDS EAST, 46.68 FEET;
- SOUTH 35 DEGREES 36 MINUTES 59 SECONDS EAST, 93.36 FEET;
- SOUTH 40 DEGREES 10 MINUTES 28 SECONDS EAST, 46.88 FEET TO THE MOST SOUTHERLY CORNER OF LOT 21 IN SAID FOX RUN LANDING SUBDIVISION;

THENCE SOUTH 26 DEGREES 32 MINUTES 52 SECONDS EAST, 31.04 FEET TO A POINT ON THE WEST LINE OF LOT 19 IN SAID FOX RUN LANDING SUBDIVISION;

THENCE SOUTHERLY AND EASTERLY ALONG SAID BOUNDARY THE FOLLOWING FIVE COURSES:

  - SOUTH 07 DEGREES 59 MINUTES 54 SECONDS WEST, 112.49 FEET;
  - SOUTH 23 DEGREES 28 MINUTES 43 SECONDS EAST, 104.00 FEET;
  - SOUTH 53 DEGREES 45 MINUTES 46 SECONDS EAST, 86.04 FEET;
  - SOUTH 79 DEGREES 37 MINUTES 25 SECONDS EAST, 75.41 FEET;
  - NORTH 81 DEGREES 14 MINUTES 25 SECONDS EAST, 90.67 FEET;

THENCE NORTH 88 DEGREES 12 MINUTES 26 SECONDS EAST, 49.18 FEET TO THE MOST WESTERLY CORNER OF LOT 15 IN SAID FOX RUN LANDING SUBDIVISION;

THENCE ALONG THE WEST LINE OF SAID LOT 15, SOUTH 26 DEGREES 31 MINUTES 03 SECONDS EAST, 67.54 FEET TO THE NORTHWEST CORNER OF SAID LOT 14;

THENCE ALONG THE WEST LINE OF SAID LOT 14, SOUTH 06 DEGREES 51 MINUTES 38 SECONDS EAST, 70.87 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINS AN AREA OF 33,666 SQUARE FEET (0.773 ACRES), MORE OR LESS.

This drawing is to be used only for the project and site indicated herein. It is not to be used for any other project or site without the written consent of the engineer. The engineer assumes no liability for any error or omission in this drawing or for any consequences that may result from its use without the terms of the above agreement.

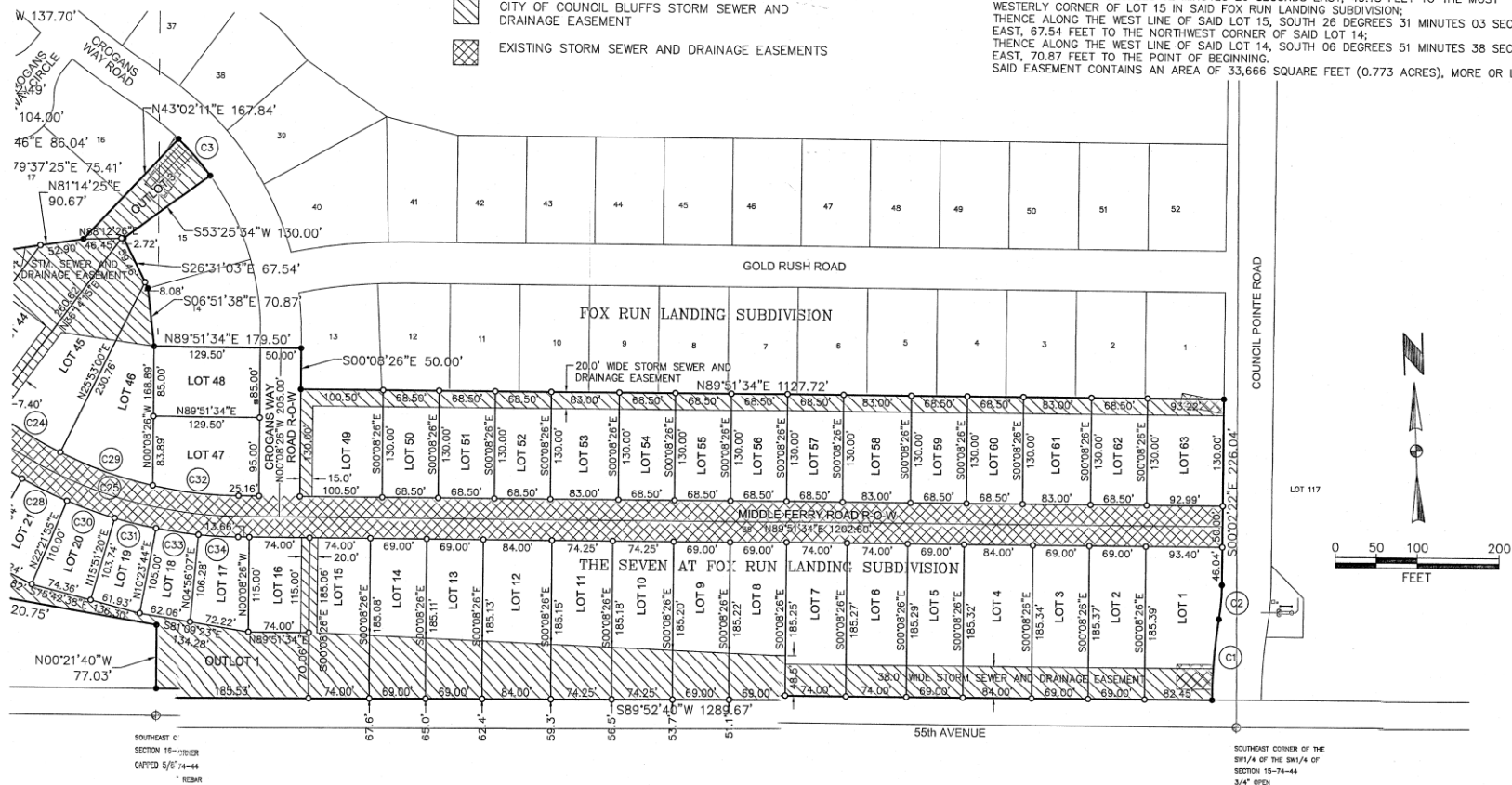
**hgm**  
ASSOCIATES INC.  
640 FIFTH AVENUE COUNCIL BLUFFS, IA  
PHONE: 712-323-0530

DATE	REVISION

**FOX RUN SUBDIVISION - PHASE III**  
A PROPOSED SUBDIVISION IN COUNCIL BLUFFS, IOWA

PROJECT NO. 106014  
CLIENT 92 INVESTMENTS L.L.C.  
P.O. BOX 683, AVOCA, IOWA 51521

**FINAL PLAT**



SOUTHEAST CORNER OF SECTION 15-74-44  
CAPPED 5/8" 74-44  
REBAR

SOUTHWEST CORNER OF THE SW1/4 OF THE SW1/4 OF SECTION 15-74-44  
3/4" OPEN

## **Recorder's Cover Sheet**

**ATTORNEY'S OPINION WITH RESPECT TO  
REPLATTING OF LOT 38, THE SEVEN AT FOX RUN LANDING SUBDIVISION  
IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA**

**Preparer Information:** (Name, address and phone number)

Rick D. Crowl  
Stuart Tinley Law Firm LLP  
P. O. Box 398  
Council Bluffs, Iowa 51502  
Telephone: 712-322-4033

**Taxpayer Information:** (Name and complete address)

92 Investments, LLC  
535 West Broadway, Suite 100  
Council Bluffs, Iowa 51503

**Return Document To:** (Name and complete address)

Rick D. Crowl  
Stuart Tinley Law Firm LLP  
P. O. Box 398  
Council Bluffs, Iowa 51502

**Grantors:**

92 Investments, LLC

**Grantees:**

92 Investments, LLC

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents, if applicable:**

**ATTORNEY'S OPINION WITH RESPECT TO THE REPLATTING OF  
LOT 38, THE SEVEN AT FOX RUN LANDING SUBDIVISION IN THE  
CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA**

TO THE COUNTY RECORDER OF POTTAWATTAMIE COUNTY:

I have examined the abstract of title in THREE parts covering the real estate described as Lots 1 through 63 inclusive (with Lots 17-32 clustered as permitted by Chapter 14.10 of the Municipal Code) being a replat of Lot 38 of "The Seven at Fox Run Landing" in the City of Council Bluffs, Pottawattamie County, Iowa.

Marketable title to the property under examination is held in **92 INVESTMENTS, LLC**, by virtue of a Warranty Deed found at Entry 100 of Part 3, dated November 7, 2011, and filed November 8, 2011, in Book 2011 at Page 14481 of Pottawattamie County, Iowa records.

Entry #91 of Part 3 sets forth a Mortgage in the amount of \$1,800,000.00 from Western Iowa Land Development, L.L.C., an Iowa Limited Liability Company by John H. Jerkovich, Member; Robert P. McCarthy, Member, to Security National Bank of Omaha, a national banking association, dated December 1, 2005, and filed December 13, 2005, in Book 106 at Page 11842 of Pottawattamie County, Iowa records.

Entry #101 of Part 3 sets forth a Mortgage in the amount of \$700,000.00 from 92 Investments, LLC, an Iowa Limited Liability Company (no seal) By: Michael Massman, Member, to Security National Bank of Omaha, a National Banking Association Organized and Existing Under the Laws of the United States of America, dated December 5, 2011, and filed December 27, 2011, in Book 2011 at Page 17025 of Pottawattamie County, Iowa records.

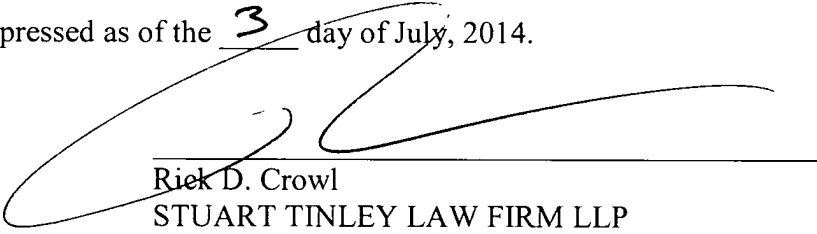
Entry #108 of Part 3 sets forth a lien search as against 92 Investments, LLC; Western Iowa Land Development, LLC; CB Real Estate Development, LLC; Golf Real Estate Development, LLC, and, except as stated herein, no liens are shown of record.

Entry #109 of Part 3 shows that the abstracter does not certify to unpaid fees for services for sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, and solid waste disposal, which have been certified to the County Treasurer for collection, unless these charges have been entered on the tax records.

Entry #111 of Part 3 shows the General Taxes for 2012 and prior years, paid.

This opinion is given solely for the purpose of re-platting the property under examination. This opinion contains only the information required in Chapter 354.11(3) 2013 Code of Iowa. This opinion should not be relied upon for any other purpose.

This opinion is expressed as of the 3 day of July, 2014.



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Rick D. Crowl  
STUART TINLEY LAW FIRM LLP  
310 W. Kanesville Blvd., 2nd Floor  
P. O. Box 398  
Council Bluffs, Iowa 51502-0398  
Telephone No. (712) 322-4033  
Fax No. (712) 322-6243  
Email: rcrowl@stuarttinley.com

Prepared by: Rick D. Cowl, Stuart Tinley Law Firm, P. O. Box 398, Council Bluffs, Iowa 51502; Tele: (712) 322-4033

### CONSENT OF PROPERTY OWNERS

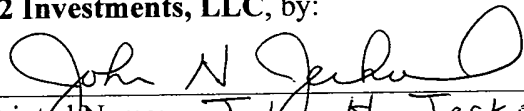
Western Iowa Land Development, LLC, an Iowa limited liability company, and 92 Investments, LLC, an Iowa limited liability Company, are the property owners of record on the following legally described property:

Lots 1 through 63 inclusive (with Lots 17-32 clustered as permitted by Chapter 14.10 of the Municipal Code) being a replat of Lot 38 of "the Seven at Fox Run Landing" in the City of Council Bluffs, Pottawattamie County, Iowa.

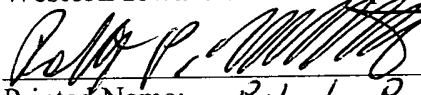
The property owners consent to the re-platting of the above-described property.

Dated this 10<sup>th</sup> day of November, 2014.


**92 Investments, LLC, by:**

  
Printed Name: John H Jerkovich  
Title: member/owner


**Western Iowa Land Development, LLC, by:**

  
Printed Name: Robert P. McCarthy  
Title: owner/member

KATHINA K. WETTER  
Commission Number 188711  
My Commission Expires  
October 28, 2017



KATHINA K. WETTER  
Commission Number 188711  
My Commission Expires  
October 28, 2017





Prepared by: Rick D. Crowl, Stuart Tinley Law Firm, P. O. Box 398, Council Bluffs, Iowa 51502; Tele: (712) 322-4033

### CONSENT OF MORTGAGEE TO RE-PLAT

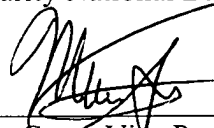
Western Iowa Land Development, LLC, an Iowa limited liability company, and 92 Investments, LLC, an Iowa limited liability Company, are the Mortgagors, and Security National Bank of Omaha, a national banking association, is the Mortgagee of record on the following legally described property:

Lots 1 through 63 inclusive (with Lots 17-32 clustered as permitted by Chapter 14.10 of the Municipal Code) being a replat of Lot 38 of "the Seven at Fox Run Landing" in the City of Council Bluffs, Pottawattamie County, Iowa.

Security National Bank of Omaha, as Mortgagee, consents to the re-platting of the above-described property owned by Mortgagors, Western Iowa Land Development, LLC, an Iowa limited liability company, and 92 Investments, LLC, an Iowa limited liability Company, in accordance with § 354.11(b), Code of Iowa.

Dated this 7<sup>th</sup> day of November, 2014.

Security National Bank of Omaha, Mortgagee, by:

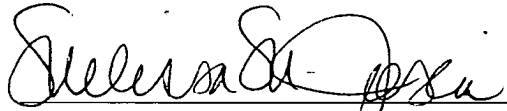


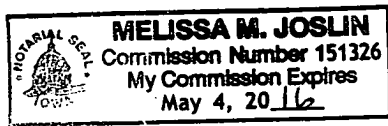
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Matt Garst, Vice President

STATE OF IOWA )  
 ) ss  
COUNTY OF POTTAWATTAMIE )

This record was acknowledged before me this 7<sup>th</sup> day of November, 2014, by Matt Garst,  
as Vice President of Security National Bank of Omaha.

  
\_\_\_\_\_  
NOTARY PUBLIC



Prepared by and return to: Rick D. Crowl, Stuart Tinley Law Firm, P. O. Box 398, Council Bluffs, Iowa 51502-0398;  
Telephone Number: (712) 322-4033

---

**AMENDED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTINS FOR THE REPLATTING OF LOT 38 OF THE SEVEN AT FOX  
RUN LANDING, AND WITH RESPECT TO OUTLOT 1 AND LOTS 17 - 32**

These Declaration of Restrictions and Covenants for The Seven at Fox Run Landing Townhomes is made this 30<sup>th</sup> day of October, 2014, by The Seven at Fox Run Landing Townhomes Association, Inc. (hereinafter "Association"), and 92 Investments, LLC (hereinafter "Developer"), collectively referred to as "Parties".

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real estate described as Outlot 1 and Lots 17 – 32, being a replat of Lot 38 of "The Seven at Fox Run Landing" in the City of Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of The Seven at Fox Run Landing, and for the maintenance of the character and residential integrity of The Seven at Fox Run Landing.

NOW, THEREFORE, Declarant hereby declares that all of the property herein above described shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. These covenants, conditions and restrictions supplement all prior covenants and restrictions for The Seven at Fox Run Landing.

**ARTICLE ONE  
DEFINITIONS**

Section 1. "Association" shall mean and refer to The Seven at Fox Run Landing Townhomes Association, Inc., a nonprofit Iowa corporation, its successors and assigns.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and all improvements thereon. Outlot 1 will be the Common Area owned by the Association at the time of the initial development of the Subdivision.

Section 3. "Common Area Improvements" shall mean and refer to (i) and improvements, including but not limited to signs, gates, sea walls, walkways, landscaping, lighting standards, common storm drains, utility lines, sewers and other service facilities, not dedicated to the City and located from time to time on the Common Area, and (ii) any perimeter fencing or gate on the Lots or Common Area and any signage which serves all of the Lots.

Section 4. "Declarant" shall mean 92 Investments, LLC, and its successors and assigns.

Section 5. "Lot" shall mean any plot of land shown on the recorded Subdivision plat referred to above with the exception of any Common Area.

Section 6. "Maintenance" shall mean the exercise of reasonable care to keep improvements and fixtures in common comparable to their original conditions, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a health, weed free environment for optimum plant growth.

Section 7. "Member" shall mean every person or entity who holds membership in the Association.

Section 8. "Mortgage" shall mean a conventional mortgage or deed of trust or a real estate contract of purchase.

Section 9. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust or the Seller under a real estate contract.

Section 10. "Owner" shall mean and refer to:

- (a) The record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial Owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchaser's obligation under the contract.

Section 11. "Subdivision" shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought with the jurisdiction of the Association as hereinafter provided.

## **ARTICLE TWO MEMBERSHIP IN ASSOCIATION – VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a Member of the Association; membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. The Association shall have two classes of voting Members as follows:

Class A. Class A Members shall be all Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a given Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Class A. Members.

Class B. The Class B Member shall be Declarant, who shall be entitled to exercise ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership are greater than the total votes outstanding in the Class B membership.

## **ARTICLE THREE ASSESSMENTS**

Section 1. Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Lot and for each Owner of any 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 for the purchase thereof, that it is, and shall be, deemed to covenant and agree to pay to the Association: (1) annual assessments for the Lot, (2) monthly assessments for townhomes, and (3) special assessments for capital improvements. Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them. (See Article Three, Section 9 hereof for subordination provisions.)

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the Subdivision, and for the management, Maintenance, repair, upkeep, and general operation of any Common Area or facilities, for the Maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the Lots in the

Subdivision. Annual/monthly assessment shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance, repair, and upkeep of all Common Areas for facilities.
- (b) Garbage, electricity, lighting, telephone, gas, and other necessary utility service for any Common Area or facilities.
- (c) Acquisition of furnishings and equipment for any Common Areas or facilities as may be determined by the Association, including without limitation all equipment, furnishings, and personnel necessary or proper for use of any common recreational facilities.
- (d) Insurance covering the full insurable replacement value of any Common Areas or facilities with extended coverage.
- (e) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the family, guests, invitees, or tenants of any Owner, arising out of their occupation and/or use of any Common Areas or facilities, or arising out of the Association's errors and omissions with respect to the Maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the Lots in the Subdivision.
- (f) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the board of directors of the Association.
- (g) A standard fidelity bond covering all Members of the board of directors of the Association and all other employees of the Association in an amount to be determined by the board of directors.
- (h) Maintenance, mowing and upkeep of the yards on the Lots in the Subdivision, which shall include the following responsibilities:
  - (i) The Maintenance of landscaping for each Lot, including normal lawn care such as watering and cutting grass, trimming of trees, shrubs and hedges, and weed, insect and disease control, but not including the care of flowers allowed to be planted by any Owner with three feet of his or her residence. Incidental thereto, the Association shall maintain and repair a sprinkler system throughout the yards of all Lots in the Subdivision for the purpose of watering lawns; the Association shall pay for the water utility service associated with such use; each Owner shall pay for the installation of a sprinkler system in the yard of his or her Lot and connect to the Association's sprinkler system.

- (ii) The removal of the natural accumulations of snow and ice from all sidewalks (both private and public), including all stoops and porches, walkways and from all driveways, all within a reasonable amount of time. However, it shall not include snow removal at rear of home on patio or decks.
  - (iii) The periodic repainting of the exterior wood surfaces of all residences in the Subdivision. The Association shall have sole discretion in determining the appropriate time when all residences should be repainted. All residences shall be repainted contemporaneously pursuant to a comprehensive plan determined by the Association. The Association shall have sole discretion in determining the color of paint for each residence so that the overall color schemes of the Subdivision are coordinated. Nothing in this paragraph shall be construed as requiring the Association to maintain or repair the exterior appearance or condition of any brick surface, siding, roofing material, or window panes on any residence in the Subdivision; nevertheless, the color and style of any brick surface, siding, roofing material, or window pane to be placed by an Owner on the exterior of his or her residence shall be subject to the prior approval of the Association.
  - (iv) The spraying of chemicals on the yards of each Lot and around the exterior perimeters of all residences in the Subdivision to control the proliferation of insects, bugs, mosquitoes, rodents, and other pests.
  - (v) The Maintenance and repair of all Common Areas and Common Area improvements.
- (i) Any other materials, supplies, furniture, labor, services, Maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or the By Laws of the Association, or which shall be necessary or proper in the opinion of the board of directors of the Association for the operating of any Common Areas or facilities, for the Maintenance and upkeep of the yards and the exterior appearance of all structures on the Lots in the Subdivision, for the benefit of Lot Owners, or for the enforcement of these restrictions.
  - (j) In the event the need for any Maintenance or repair mentioned in this section is attributable to the willful or negligent act of the Owner of a Lot, or of his or her family, guests or invitees, the cost of such Maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

Section 3. Maximum Annual Assessment. The Members of the Association may vote to set a maximum amount for the annual assessment for any given year. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum set by the Members of any given year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in an assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property related thereto, on any Common Area, or on any Lot if such improvement is for the collective benefit of the Members and not just for the particular advantage of the Owner of the Lot. Any such assessment must be approved by a majority of each class of Members.

Section 5. Notice and Quorum For Action Authorized Under Section 3 and 4. Written notice of any meeting called for the hereinbefore purpose of taking any action authorized by Section 3 or 4 hereinbefore shall be sent to all Members not less than five (5) nor more than twenty (20) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each class of Members, Members who were not present in person or by proxy may give their assent in writing within ten (10) days after the date of such meeting.

Section 6. Uniform Rate of Assessment. The annual, monthly and special assessments must be fixed at a uniform rate for all Lots, unless otherwise stated in the assessment.

Section 7. Commencement and Collection of annual Assessments. Any annual assessments provided for herein shall commence as to all Lots on the first day of the month following a determination by the Members of the Association that such assessments shall begin. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the annual assessment against each Lot at least ten (10) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to ever Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific Lot has been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any Common Areas or facilities, or by abandonment of his or her Lot.

Section 9. Subordination of Assessment Lien to Mortgages. The lien of 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 Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any 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 Association. No Mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

#### **ARTICLE FOUR PROPERTY RIGHTS**

Section 1. Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of enjoyment in and to any Common Areas or facilities which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights of the Association:

- (a) The right to suspend the right of use of any Common Areas or recreational facilities and the voting rights of any Owner for periods during which assessments against his or her Lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding sixty (60) days for any infraction of the published rules and regulations of the Association.
- (b) The right to dedicate or transfer all or any part of any Common Areas or facilities to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been duly recorded.

Section 2. Delegation of Use. Subject to such limitations as may be imposed by the By Laws, each Owner may delegate his right of enjoyment in and to any Common Areas and facilities to the Members of his or her family, guests, tenants, and invitees.

Section 3. Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent Lots (and between each Lot and any portion or portions of any Common Areas or facilities adjacent thereto) for any encroachment due to the unwillful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this Declaration. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

Section 4. Other Easements and Party Walls.

- (a) Easements for installation and Maintenance of utilities and drainage facilities are shown on the recorded Subdivision plat. In addition to the right of use thereof by the utilities, any cable television franchisee of the City of Council Bluffs is also granted the right to install and maintain its lines and equipment in such easements. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and Maintenance of utilities, or which may damage, interfere with, or change the direction or flow of drainage facilities in the easements.
- (b) No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations and cable television companies, their employees and contractors, and shall also be open and accessible to Declarant, its successors, and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.
- (c) Each wall which is built as a common wall separating two dwelling units of a Townhomes constructed in the Subdivision shall constitute a party wall (or a wall in common), and the provisions of Chapter 563 of the Code of Iowa regarding walls in common shall apply thereto.

Section 5. Right of Entry. The Association, through its duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot at any reasonable hour on any day to perform such Maintenance or repair as may be authorized herein.

Section 6. Partition. There shall be no judicial partition of any Common Area, nor shall Declarant, or any Owner, or any other person acquiring any interest in the Subdivision or any part thereof, seek judicial partition thereof.

## **ARTICLE FIVE RESTRICTIONS AND COVENANTS**

The Subdivision shall be occupied and used only as follows:

Section 1. Each lot shall be used as a residence for a single family and for no other purpose; however, an Owner may use a portion of his or her residence for an office, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner.

Section 2. Except as allowed in the preceding section, no business of any kind shall be conducted on any residence, with the further exception of the business of Declarant or the transferees of Declarant in developing all of the Lots as provided in Section 11 hereinafter.

Section 3. No noxious or offensive activity, annoyance, or nuisance shall be carried on in or on any Lot and/or Common Area, with the exception of the business of Declarant or the transferees of Declarant in developing all of the Lots as provided in Section 11 hereinafter.

Section 4. No sign of any kind shall be displayed to public view on a Lot or any Common Area or facility with the prior written consent of the Association, except customary name and address signs, and law signs of not more than five (5) square feet in size advertising a property for sale or rent, and except for signs used by Declarant or the transferees of Declarant in developing all of the Lots as provided in Section 11 hereinafter.

Section 5. Nothing shall be done or kept on any Lot or on any Common Area or facility which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his or her Lot or on any Common Area or facility which would result in the cancellation of insurance on any residence or on any part of any Common Area or facility, or which would be in violation of any law.

Section 6. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred, or kept on any Lot or on any Common Area or facility. However, dogs, cats, or other normal household pets may be kept on Lots subject to such rules and regulations of the City of Council Bluffs, so long as they are not kept, bred, or maintained for commercial purposes, and provided that they are kept on leashes whenever outside, and further provided that only one animal house shall be allowed, and it must be approved by the Architectural Control Committee. Each owner is responsible for cleaning up after his or her pets, including the removal of stools left by the pets when being walked. No dog runs of any kind shall be allowed. Any dog house shall be at the rear of residence concealed from public view and the design and location must be approved by the Architectural Control Committee in advance of installation.

Section 7. No debris, rubbish, trash, garbage, or other waste material shall be kept or permitted on any Lot or on any Common Area or facility except in sanitary containers located in appropriate areas concealed from public view. No excess or unused building material shall be kept, stored, or otherwise maintained on any Lot in a location within public view, other than for use connected with approved or permitted construction.

Section 8. No fence, or other dividing instrumentality shall be construed or maintained on any Lot in the Subdivision. Invisible fencing for animals may be installed at the Owner's expense and with the prior written approval of the Architectural Control Committee.

Section 9. No outbuilding, tent, shack, garage, trailer, shed, or temporary building of any kind shall be constructed or maintained on any lot.

Section 10. Nothing shall be altered in, constructed on, or removed from any Common Area or facility except with the written consent of the Association.

Section 11. Declarant or the transferees of Declarant shall undertake the work of developing all Lots included within the Subdivision. The completing of that work, and the sale,

rental, or other disposal of residential units is essential to the establishment and welfare of the Subdivision as an ongoing residential community. In order that such work may be completed and the Subdivision be established as a fully occupied residential community, nothing in the Declaration shall be understood or construed to:

- a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the Subdivision owned or controlled by Declarant, Declarant's transferees, or their representatives, whatever they determine may be reasonable necessary or advisable in connection with the completion of such work.
- b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from any constructing or maintaining on any part or parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonable necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale.
- (c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, the business of completing such work, of establishing the Subdivision as a residential community, and of disposing of Lots by sale.
- (d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by an of them as may be necessary in connection with the sale of Subdivision Lots.

Section 12. No exterior television or radio antenna or disc of any sort shall be permitted on any Lot, unless the same has been approved by the Architectural Control Committee. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

Section 13. No exterior addition thereto or any change or alteration therein may be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing (as to conformity and harmony of external design with existing structures in the Subdivision, and as to locate in relating to topography and finished ground elevation) by the board of directors of the Association, or by an Architectural committee composed of three (3) Members of the Association appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such design and location shall be deemed to have been disapproved. Approval shall be revoked if the building or construction associated with the plans

has not been commenced within three (3) years of the date of approval of the plans. Construction of improvements must be completed within one (1) year from date of commencement.

Section 14. No boat, camper, trailer, auto-drawn or mounted trailer of any kin, mobile home, truck over one (1) ton capacity, 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 for the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets, However, this section 14 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. All garage doors must be closed when not in use.

Section 15. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be stored or be permitted to remain outside 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 unless approved by the Architectural Committee, except when in actual use. No garbage, refuse, rubbish 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.

Section 16. 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.

Section 17. No external swimming pool may be constructed or maintained on any lot extending more than one foot above ground level.

Section 18. Driveway and driveway approaches on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overly of a driveway will be permitted.

Section 19. All utility service lines from each Lot line to a dwelling or other improvement shall be underground.

Section 20. No Owner shall be permitted to install a dock on the shoreline unless the dock is approved by the Architectural Committee. All docks will be a standard material and must be maintained.

**ARTICLE SIX  
OWNER'S OBLIGATION TO REPAIR AND MAINTAIN**

Except as otherwise provided in this Declaration, each Owner shall, at his or her sole cost and expense, repair, maintain, and restore the exterior appearance of his or her premises and the improvements situated thereon, keeping the same in a condition comparable to the condition of such premises at the time of its initial construction, excepting only normal wear and tear. In the event an Owner of any Lot in the Subdivision shall fail to do so in a manner satisfactory to the board of directors, then the Association after approval by a two-thirds (2/3) vote of the Association Members, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the residence and any other improvements erected thereon. The cost of such repair, Maintenance, or restoration shall be added to and become part of the assessment to which such Lot is subject by this Declaration.

**ARTICLE SEVEN  
OWNER'S OBLIGATION TO REBUILD**

If all or any portion of a residence or other structure on any Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence or other structure in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within three (3) months after the damage occurs, and shall be completed within nine (9) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners.

**ARTICLE EIGHT  
INSURANCE**

The Association shall purchase and provide general liability coverage insurance in such amounts as shall be determined from time to time by the Board of Directors of the Association for the Common Area and Common Area Improvements. The Association may provide Directors and Officer liability coverage insurance for the Association, for its Officers, and Members of the Board of Directors. In addition, the Association may purchase such additional insurance against other hazards which may be deemed appropriate by the Board of Directors.

Each Owner shall be responsible for obtaining their own homeowners insurance for both the interior and exterior of their home, and on the contents, as well as their decorations, furnishings and personal property therein and any personal property stored elsewhere on the Subdivision. In addition, each Owner shall purchase insurance to insure against his or her personal liability and loss or damage by fire or other hazards.

The Association will not insure the personal property of the individual Owners as this is the responsibility of the Owners.

The Association may, after the entire project is sold out, insure the exterior of each duplex townhome with a replacement cost, multiperil policy with a deductible limit as determined by two-thirds (2/3) of the Association Members.

## **ARTICLE NINE ACCESS**

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

## **ARTICLE TEN EASEMENTS**

Section 1. There are hereby reserved in favor of the Owners, their families, guests, invitees and servants, a non-exclusive easement to use, free of charge, in common with others entitled to similar use, any and all of the Common Area Improvements existing from time to time in the Subdivision, upon or under the Common Area, subject to such reasonable and uniformly applied rules and regulations as the Board of Directors of the Association may establish from time to time with respect to such use.

Section 2. There are hereby reserved in favor of and granted to the Owners, nonexclusive easements under, through and across the Common Area for sewers, electricity, television, water, telephone and all other utility purposes, including the right to use of any such existing systems, structures, mains, sewers, conduits, lines, and other public utilities and service facilities. The grantee of such easement shall bear all costs related to the use of the easement and shall repair to the original specifications any damage to the Common Area resulting from such use, provided the costs of maintaining and repairing common storm drains, utility lines, sewers and other service facilities are expenses in accordance with Article Three.

Section 3. There hereby is reserved in favor of the Owners and their tenants, agents, and invitees, and the agents and invitees of such tenants, a nonexclusive easement to use, free of charge, in common with others entitled to similar use, any and all of the sidewalks existing from time to time within the Common Area. There hereby is further reserved in favor of the Association, its agents and contractors, the right to enter upon each Lot from time to time for the purpose of construction, repairing and maintaining the sidewalks in the event the Owner fails to provide for such construction, repair, or Maintenance.

Section 4. Individual Owners are responsible to obtain permission to access any other Owner's property including the side, front, back lawns, shorelines and docks. Without express permission, said property is off limits.

**ARTICLE ELEVEN  
ARCHITECTURAL CONTROL**

Section 1. Appointment. The Directors shall appoint three or more people to serve as the Architectural Control Committee. The Members of the Committee serve at the pleasure of the Directors and may be replaced at any time with or without cause.

Section 2. Power and Duties of the Committee. No building, fence, wall, or other structure shall be commenced, erected or maintained, upon the Subdivision, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plants be planted or maintained upon the Subdivision, until the plans and specifications therefor showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and located in relation to surrounding structures and topography, and in relation to other trees, shrubs and plants, by the Committee. Failure of the Committee to act on such plans as submitted within forty-five (45) days after the date of submission shall be deemed to be approved of such plans, and the Owners may proceed in accordance with such plans and specifications.

Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the construction may be required of the applicant at the discretion of the Committee. Submittals for approval shall be made in duplicate and the components and actions of the Committee will be identically marked on both copies of the Submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Committee the following documents, materials and/or drawings:

- 1) Site plans indicating specific construction or improvements and indicating Lot number, street address, grading and surface drainage; and
- 2) Complete construction plans, including, but not limited to, floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.

After the construction of the original structure on each Lot, no change to exterior appearances of the structure, appurtenances (decks, patio, wall or exterior landscaping) shall be permitted without the prior written approval of the Committee. Appropriate documentation will be required by the Committee for proposed changes after the original construction is completed.

**ARTICLE TWELVE  
GENERAL PROVISIONS**

Section 1. Enforcement. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, 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.



Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendments. This Declaration may be amended by Declarant in any manner which it may determine in its full and absolute discretion until all of the Lots have been sold. Thereafter, this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than two-thirds (2/3) of each class of Members.


Section 4. Subordination. No breach of any of the conditions herein contained, or reentry by reason of such breach, shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the Subdivision or any Lot therein; provided, however, that such conditions shall be binding on any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association of any Member thereof for a period of twenty-one (21) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years each by the Association or any Lot Owner filing for record in the Pottawattamie County Recorder's Office an affidavit of renewal.

EXECUTED at Council Bluffs, Iowa on this 30<sup>th</sup> day of October, 2014.

**"DECLARANT"**

92 Investments, LLC, by:




Printed Name: Robert P. McCourthy

Title: member

**"ASSOCIATION"**

The Seven at Fox Run Landing Townhomes Association, Inc., by:



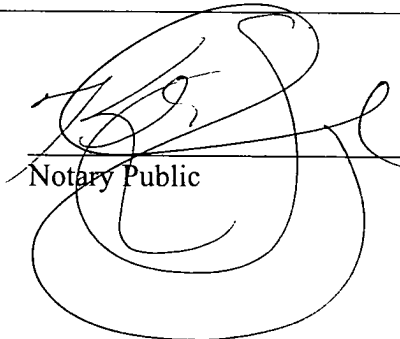
Printed Name: Robert P. McCourthy

Title: Developer / member

STATE OF IOWA, COUNTY OF POTTAWATTAMIE

This record was acknowledged before me this 30<sup>th</sup> day of October, 2014,  
by Robert F. McCarthy  
as Member  
of 92 Investments, LLC.

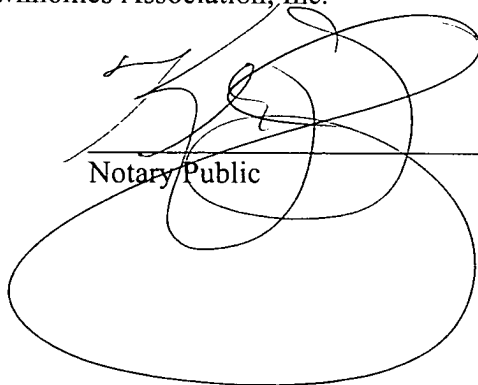


  
Notary Public

STATE OF IOWA, COUNTY OF POTTAWATTAMIE

This record was acknowledged before me this 30<sup>th</sup> day of October, 2014,  
by Robert F. McCarthy  
as Developer/Member  
of The Seven at Fox Run Landing Townhomes Association, Inc.



  
Notary Public

Prepared by and return to: Rick D. Crowl, Stuart Tinley Law Firm, P. O. Box 398, Council Bluffs, Iowa 51502-0398;  
Telephone Number: (712) 322-4033

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**DECLARATION OF RESTRICTIONS AND COVENANTS  
FOR THE REPLATTING OF LOT 38 OF THE SEVEN AT FOX RUN LANDING, AND  
WITH RESPECT TO OUTLOTS 2 AND 3, AND LOTS 35 – 63**

This Declaration of Restrictions and Covenants is made this 30<sup>th</sup> day of October, 2014, by 92 Investments, LLC (hereinafter “Developer”).

The Declaration of Restrictions and Covenants for Outlots 2 and 3, and Lots 35 – 63 of the Replat of Lot 38 of the Seven at Fox Run Landing are as follows:

1. The new subdivision consisting of Outlots 2 and 3, and Lots 35 – 63 of the Replat of Lot 38 of the Seven at Fox Run Landing (hereinafter “Lots”), owned by Developer, hereby adopts and incorporates all of the current restrictions and covenants of record for Fox Run Landing.

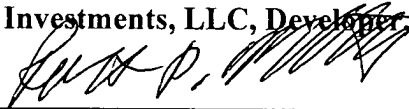
2. In addition to the current restrictions and covenants, the Developer shall retain the exclusive right of full Architectural Control of said Outlots 2 and 3, and Lots 35 – 63 of Fox Run Landing, until such time as the last Lot is sold and/or all developer financing is released by Developer. Architectural Control shall mean that Developer has the right to approve of all plans and post-construction changes; and any changes to the easements or changes to the restrictive covenants with respect to these Lots. With respect to this approval process, the following shall apply:

- a. No residence or exterior structure may be erected upon any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation and grade thereof have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee. No structures of any kind shall be moved onto any Lot, nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by Developer, or its designee. No change or alteration in such elevation, grade and landscaping shall be made, unless such change or alteration is in conformance with Council Bluffs, Iowa Zoning Ordinances.

- b. Following the completion of construction of any residence or exterior structure, no exterior colors or landscaping thereof or with respect thereto shall be changed, and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee. All replacement of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure, unless the changes have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee.
- c. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a lot, nor shall any exterior painting, resurfacing, addition to, change or alteration therein, be made until the plans, specifications, and plot plan showing the size, nature, kind, shape, height, materials and location of the same have been submitted to an approved in writing as to harmony of external design, color and location in relation to the surrounding structures and topography by Developer, or its designee.
- d. For Lots 35, 36, 46, 47, 48, 62 and 63, the minimum threshold elevation for window-well, top sill, and/or door, window, or any other exterior openings into the house structure shall be 973.0 feet. All other Lots are slab-on-grade construction with a minimum floor elevation of 973.0 feet. Minimum elevations may be modified upon submittal of a request and receipt of an approval, by and at the discretion of the City of Council Bluffs Public Works Department, on a lot by lot basis. The stated minimum elevation is referenced to the original design documents for this subdivision and Plat. Lot owners should obtain copies of said documents on file with the City of Council Bluffs Works Department, prior to final location and elevation determination for construction. The intent of the stated elevation minimums is to lessen the possibility of surface water entering the structure. Groundwater is a separate issue that is not addressed by these minimum elevations, but should be evaluated if basements are considered (where permitted).
- e. All such plans and specifications shall be submitted to Developer at its office in Council Bluffs, Iowa. The subdivision is composed of the Lots, which have been developed expressly for residential purposes and the construction of residences. The primary purpose of design and other controls is to protect and preserve the value of the residences in the Fox Run Landing Subdivision for the benefit of both the individual Lot owners and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality, or as a mere land restriction. A secondary purpose of the design and other controls is to protect Developer's financial investment in the unsold Lots.
- f. Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at is option, delegate all or any part of

the function of control to the Board of Directors of a Homeowner's Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of such Homeowner's Association, and it may not be delegated to a separate control committee or other similar group. Any such delegation by Developer of all or part of its control function to such Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

92 Investments, LLC, Developer, by:

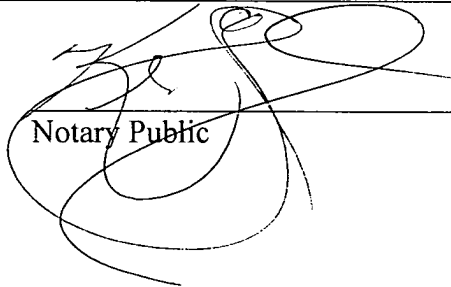


Printed Name: Robert P. McCarthy

Title: member

STATE OF IOWA, COUNTY OF POTTAWATTAMIE

This record was acknowledged before me this 30<sup>th</sup> day of October, 2014,  
by Robert P. McCarthy  
as Member  
of 92 Investments, LLC.



Notary Public



Prepared by and return to: Rick D. Crowl, Stuart Tinley Law Firm, P. O. Box 398, Council Bluffs, Iowa 51502-0398;  
Telephone Number: (712) 322-4033

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**DECLARATION OF RESTRICTIONS AND COVENANTS  
FOR THE REPLATTING OF LOT 38 OF THE SEVEN AT FOX RUN LANDING, AND  
WITH RESPECT TO OUTLOT 1, AND LOTS 1 – 34**

This Declaration of Restrictions and Covenants is made this 30<sup>th</sup> day of October, 2014, by 92 Investments, LLC (hereinafter “Developer).

The Declaration of Restrictions and Covenants for Outlot 1, and Lots 1 – 34 of the Replat of Lot 38 of The Seven at Fox Run Landing are as follows:

1. The new subdivision consisting of Outlot 1, and Lots 1 – 34 of the Replat of Lot 38 of The Seven at Fox Run Landing (hereinafter “Lots”), owned by Developer, hereby adopts and incorporates all of the current restrictions and covenants of record for the Seven at Fox Run Landing.

2. In addition to the current restrictions and covenants, the Developer shall retain the exclusive of full Architectural Control of the Lots, until such time as the last Lot is sold and/or all developer financing is released by Developer. Architectural Control shall mean that Developer has the right to approve of all plans and post-construction changes; and any changes to the easements or changes to the restrictive covenants with respect to these Lots. With respect to this approval process, the following shall apply:

- a. No residence or exterior structure may be erected upon any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation and grade thereof have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee. No structures of any kind shall be moved onto any Lot, nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by Developer, or its designee. No change or alteration in such elevation, grade and landscaping shall be made, unless such change or alteration is in conformance with Council Bluffs, Iowa Zoning Ordinances.

- b. Following the completion of construction of any residence or exterior structure, no exterior colors or landscaping thereof or with respect thereto shall be changed, and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee. All replacement of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure, unless the changes have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer, by its designee.
- c. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a lot, nor shall any exterior painting, resurfacing, addition to, change or alteration therein, be made until the plans, specifications, and plot plan showing the size, nature, kind, shape, height, materials and location of the same have been submitted to an approved in writing as to harmony of external design, color and location in relation to the surrounding structures and topography by Developer, or its designee.
- d. For Lots 1 and 34, the minimum threshold elevation for window-well, top sill, and/or door, window, or any other exterior openings into the house structure shall be 973.0 feet. All other Lots are slab-on-grade construction with a minimum floor elevation of 973.0 feet. Minimum elevations may be modified upon submittal of a request and receipt of an approval, by and at the discretion of the City of Council Bluffs Public Works Department, on a lot by lot basis. The stated minimum elevation is referenced to the original design documents for this subdivision and Plat. Lot owners should obtain copies of said documents on file with the City of Council Bluffs Works Department, prior to final location and elevation determination for construction. The intent of the stated elevation minimums is to lessen the possibility of surface water entering the structure. Groundwater is a separate issue that is not addressed by these minimum elevations, but should be evaluated if basements are considered (where permitted).
- e. All such plans and specifications shall be submitted to Developer at its office in Council Bluffs, Iowa. The subdivision is composed of the Lots, which have been developed expressly for residential purposes and the construction of residences. The primary purpose of design and other controls is to protect and preserve the value of the residences in The Seven at Fox Run Landing Subdivision for the benefit of both the individual Lot owners and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality, or as a mere land restriction. A secondary purpose of the design and other controls is to protect Developer's financial investment in the unsold Lots.

- f. Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at is option, delegate all or any part of the function of control to the Board of Directors of a Homeowner's Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of such Homeowner's Association, and it may not be delegated to a separate control committee or other similar group. Any such delegation by Developer of all or part of its control function to such Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

92 Investments, LLC, Developer, by:



Printed Name: Robert P. McCarthy

Title: member

STATE OF IOWA, COUNTY OF POTTAWATTAMIE

This record was acknowledged before me this 30<sup>th</sup> day of October, 2014,  
by Robert P. McCarthy  
as Member  
of 92 Investments, LLC.



Notary Public





## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

**WHEREAS**, The Property Owner recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Fox Run Landing Phase III: located in the jurisdiction of the City of Council Bluffs, Pottawattamie County, Iowa; and,

**WHEREAS**, the Property Owner (whether one of more) is the owner of real property depicted on Exhibit "A" (hereinafter referred to as "the Property"), and,

**WHEREAS**, the City of Council Bluffs (hereinafter referred to as "the City") requires and the Property Owner, and its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

**WHEREAS**, the Post Construction Stormwater Management Plan, 13-03634, (hereinafter referred to as "PCSMP"), should be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns. The Seven at Fox Run Landing Townhomes Association Inc.

**NOW, THEREFORE**, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

1. The facility or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Council Bluffs or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City of Council Bluffs or its designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The Plan shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater BMP function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City.
3. The Property Owner, its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of Council Bluffs or its designee.
4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall

provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require the Property Owner to provide, within 7 calendar days, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.

5. The Property Owner its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the response by the Property Owner for corrective actions, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Council Bluffs or its designee in its sole discretion, the City of Council Bluffs or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Council Bluffs or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.

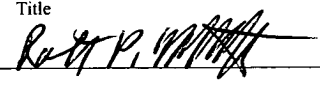
The City of Council Bluffs or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City of Council Bluffs expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligence or intentional acts of the City. Failure to pay the City of Council Bluffs or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Council Bluffs or its designee shall thereafter be entitled to bring an action against the Property Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.

6. The Property Owner shall not obligate the City of Council Bluffs to maintain or repair the facility or facilities, and the City of Council Bluffs shall not be liable to any person for the condition or operation of the facility or facilities.
7. The Property Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim unless due solely to the negligence of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City of Council Bluffs and the Property Owner, each will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligence or intentional act of the City.
8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City of Council Bluffs to enforce any of its ordinances as authorized by law.
9. This Agreement shall be recorded with the Register of Deeds of Pottawattamie County, Iowa and shall constitute a covenant running with the land and shall be binding on the

Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner (s) has/ have executed this agreement this day 25<sup>th</sup> of November, 2014

**INDIVIDUAL, PARTNERSHIP and/or CORPORATION**

<u>92 Investments LLC</u> Name of Individual, Partnership and/or Corporation
<u>Robert P. McCarthy</u> Name
<u>owner / member</u> Title
<u></u> Signature

_____ Name of Individual, Partnership and/or Corporation
_____ Name
_____ Title
_____ Signature

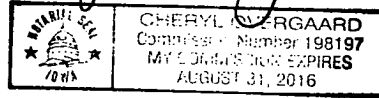
_____ Name of Individual, Partnership and/or Corporation
_____ Name
_____ Title
_____ Signature

_____ Name of Individual, Partnership and/or Corporation
_____ Name
_____ Title
_____ Signature

STATE OF IOWA )  
 )ss.  
COUNTY OF POTTAWATTAMIE)

On this 25<sup>th</sup> day of November, 2004, before me, a notary public in and for said county and said state, personally appeared Robert J. McCarthy, to me known to be the person named in and who did say that he is President, Treasurer, Director of said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of Directors and the said President, Treasurer, Director acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Cheryl Overgaard  
Notary Public in and for the State of Iowa



## **Exhibit A**

### **Fox Run Landing Phase III**

**Legal Description:**

All of Lot 38, The Seven at Fox Run Landing, A Subdivision of the City of Council Bluffs, Pottawattamie County, Iowa, as recorded in the office of the Pottawattamie County recorder in Book 106 at Page 20865.

Said Lot contains an area of 21.130 Acres, more or less.

## Exhibit B

<b>Maintenance Tasks for Vegetated BMPs</b>	
<b>End of Growing Season (August -September)</b>	
<b>TASK</b>	<b>EXPLANATION</b>
General Inspection	Check for standing water, slope stability, sediment accumulation, trash and debris, presence of burrows and erosion, and integrity of inlet / outlet, and other engineered features.
Clean out sediment and debris	Clean out sediment and debris from the inlet, outlet, the BMP and detention basin, dispose of in accordance with all regulations.
Check areas surrounding the BMP	Check for signs of erosion or instability and make sure that aesthetics are maintained throughout the BMP footprint.
Mowing	Vegetated cover shall be mowed on a routine basis. BMP shall be mowed prior to any inspections.
Winter stabilization	May be necessary to establish erosion prevention practices to maintain the BMP over the winter when plantings are dormant
<b>Beginning of Growing Season (March – April)</b>	
General Inspection	Check for standing water, slope stability, sediment accumulation, trash and debris, presence of burrows and erosion, and integrity of inlet / outlet, and other engineered features.
Clean out sediment and debris	Clean out sediment and debris from the inlet, outlet, the BMP and detention basin, dispose of in accordance with all regulations.
Provide site stabilization	Ensure that vegetation and other erosion stabilizing mechanisms are intact.
Check areas surrounding the BMP	Check for signs of erosion or instability and make sure that aesthetics are maintained throughout the BMP footprint.
Weeding / Pruning	Remove invasive and excess biomass and dispose of appropriately.
Replace / Augment vegetation	Re-seed bare or thin turf areas, if necessary dead plants shall be removed and replaced.

CERTIFICATE AND RECEIPT

=====

STATE OF IOWA

} SS.

POTTAWATTAMIE COUNTY,

The undersigned, Deputy City Clerk of the City of Council Bluffs, Iowa, hereby certifies:  
Resolution 14-249 and proof of publication are the same that appears as record in this  
office.

Witness my hand and seal of Council Bluffs, Iowa,

this 13<sup>th</sup> day of November, 2014



Jodi Quakenbush  
Deputy City Clerk of the City of Council Bluffs

=====

CERTIFICATE AND RECEIPT

=====

STATE OF IOWA

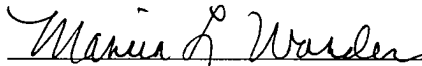
} SS.

Pottawattamie County,

The undersigned, City Clerk of the City of Council Bluffs, Iowa, hereby certifies that: Resolution 14-249, Attachment "A" and the Public Hearing Notice is as the same appears of record in this office.

Witness my hand and seal of Council Bluffs, Iowa,

This 19<sup>th</sup> day of December A.D., 2014



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

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**RESOLUTION NO. 14-249**

**A RESOLUTION GRANTING FINAL PLAT APPROVAL FOR A 63-LOT RESIDENTIAL CLUSTER SUBDIVISION TO BE KNOWN AS FOX RUN LANDING, PHASE III.**

**WHEREAS,** 92 Investments, LLC, is requesting final plat approval for a 63-lot residential cluster subdivision to be known as Fox Run Landing, Phase III; and

**WHEREAS,** The proposed subdivision is an extension of Middle Ferry Road extending from Harding's Landing Road to Council Pointe Road and is legally described as being a replat of Lot 38, The Seven at Fox Run Landing in the City of Council Bluffs, Pottawattamie County, Iowa; and

**WHEREAS,** The final plat has been reviewed by the appropriate city departments and utilities, with comments as follows:

1. The proposed subdivision is consistent with the purpose and intent of the Council Bluffs Municipal Subdivision and Zoning Ordinances.
2. All electric, cable and communication facilities shall be installed underground.
3. The developer shall install sidewalks, at no expense to the City, along the street frontage of all lots and outlots, including cul-de-sacs, prior to issuance of a Certificate of Occupancy for each residence. Sidewalk installation along all outlots that abut a public right-of-way shall occur as part of the street paving. All sidewalks shall be built to City standards.
4. The Council Bluffs Water Works has confirmed that the applicant has entered into a main extension agreement for this subdivision. Installation of the water main is underway at the time of this report.
5. MidAmerican Energy has indicated that the applicant has entered into an agreement for the installation of underground electric distribution facilities. The installation of the facilities has not been initiated at the time of this report but should be complete by November 1, 2014.
6. Black Hills Energy has indicated all natural gas lines will be installed by the end of October 2014.
7. Street lights are proposed for this subdivision. Street lights shall meet Public Works Department standards. All costs associated with the installation of street lights shall be the responsibility to the developer.
8. The installed post construction storm water quality features shall be certified by the engineer of record and the proper bond shall be submitted to the Public Works Department in accordance with Chapter 16.20., *Post-Construction Stormwater Control* of the Council Bluffs Municipal Code.
9. Sanitary sewer test results (mandral, air pressure, and video), geotechnical compaction tests, and concrete testing records shall be supplied to the Public Works Department.
10. A performance bond equal to the amount of all remaining subdivision infrastructure improvements has been received by developer to the City.
11. A final walk-through inspection is required prior to the acceptance of public infrastructure improvements.

12. The fifth paragraph of the proprietor's statement shall be amended to remove the second "the" before the statement 'drawing which is part of this document.'
13. Separate the statement 'groundwater is a separate issue that is not addressed by these minimum elevations, but should be evaluated if basements are considered (where permitted)' from the minimum threshold elevation language stated in the sixth paragraph of the proprietor's statement.
14. The seventh paragraph of the proprietor's statement shall be amended and clarified to state 'said storm sewer and drainage easement...' The same modification(s) shall be made to the appropriate labels on the plat exhibits and easement summary list on sheets 2 and 3.
15. On Sheet 1, amend the Community Development Director's name in the signature block line to state 'Donald D. Gross' instead of Donald Gross.

**WHEREAS,** The Community Development Department recommends approval of the final plat for a residential cluster subdivision to be known as Fox Run Landing, Phase III, subject to compliance with all above stated comments and the following conditions:

- a) All technical corrections required by the Community Development Department and/or Public Works Department including the modifications discussed above, shall be made on the final plat document prior to execution of the document.
- b) Conform to all City standards and specifications, the zoning and subdivision ordinances and the Department of Public Works Standards for Public Improvements.
- c) 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.
- d) The developer shall provide a copy of the proposed covenants and/or private restrictions associated with the subdivision.
- e) All utilities shall be installed underground.

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

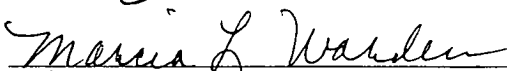
That the final plat for a 63-lot residential cluster subdivision to be known as Fox Run Landing, Phase III, as shown on Attachment "A" is hereby approved subject to the comments and conditions set forth above.

ADOPTED  
AND  
APPROVED

September 22, 2014

ATTEST:

  
Matthew J. Walsh Mayor

  
Marcia L. Worden 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 14th day of September, 2014

Signed in my presence by the said Amy McKay and by her sworn to before me this 15th day of September, A.D. 2014.

**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 for final plat approval of a sixty-three lot residential cluster subdivision to be known as Fox Run Landing, Phase III, described as being a replat of Lot 38 of 'The Seven at Fox Run Landing', all in the City of Council Bluffs, Pottawattamie County, Iowa. Location: An extension of Middle Ferry Road from Hardings Landing Road to Council Pointe Road.  
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 22nd day of September, 2014 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.  
2014/9/14-1 Sunday

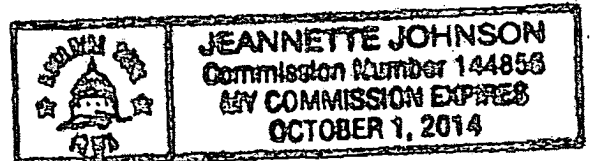


Amy McKay  
Daily Nonpareil Controller



Jeannette Johnson  
Notary Public

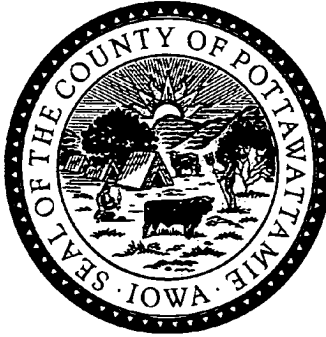
Filed this 15th day of September, A.D. 2014.  
Publication Cost: \$ 11.86



Customer Number: 35700  
Order Number: 20368449

# Pottawattamie County Auditor's Certification Of Subdivision Name Approval

MARILYN JO DRAKE  
POTTAWATTAMIE COUNTY AUDITOR  
AND ELECTION COMMISSIONER  
P. O. BOX 649  
COUNCIL BLUFFS, IOWA 51502-0649



Kristi Everett, First Deputy - Elections  
Joan Miller, First Deputy - Real Estate  
Rebecca Belt, First Deputy - Tax and  
Finance  
Phone (712) 328-5700  
FAX (712) 328-4740

I, Marilyn Jo Drake, 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:

**FOX RUN LANDING PHASE III**

*Joan P. Miller Deputy of Real Estate*  
Signed

*12/23/14*  
Date