

Prepared By: Samuel H. Braland, P.O. Box 370, Earlham, Iowa 50072
Telephone (515) 758-2267.

**STATEMENT BY PROPRIETORS,
CONSENT TO PLAT, AND DEDICATION**

KNOW ALL PERSONS BY THESE PRESENTS:

John H. Westphal, Janice L. Kirk, and the Patricia A. Spillers Trust, being the owners in fee simple of the following described real estate, to-wit:

Parcel "A", which was described as the East 37 rods and 17 links of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, now more particularly described as follows:

Beginning at the East Quarter Corner of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, thence North 90°00'00" West 622.19 feet along the North line of the Southeast Quarter of said Section 6; thence South 00°12'37" East 1304.45 feet along the West line of the East 37 rods and 17 links of the Northeast Quarter of said Southeast Quarter which was the original West line of NE. Birch Avenue; thence South 89°54'33" East 620.01 feet along the South line of the Northeast Quarter of said Southeast Quarter; thence North 00°06'52" West 1305.43 feet along the East line of said Southeast Quarter to Point of Beginning containing 18.606 acres. Said Parcel "A" is divided into Outlot A which is present Birch Avenue right-of-way; Outlot B which is present NE. 6TH Street, right-of-way; Outlot C which is to be dedicated as additional Birch Avenue right-of-way; Outlot D which is future development area and lots numbered 1 through 4,

have caused a survey and subdivision of said real estate to be made, with lots marked and numbered as shown by a final subdivision plat thereof. The final subdivision plat will be recorded with this statement, consent and dedication and shall be designated and known as:

Westphal Subdivision, an Official Plat in the City of Earlham, Madison County, Iowa.

The owners and proprietors, John H. Westphal, Janice L. Kirk, and the Patricia A. Spillers Trust, together with Robert G. Kirk the spouse of Janice L. Kirk, hereby acknowledge that the plat of said real estate is prepared with their free consent and in accordance with their desires. The said owners and proprietors hereby dedicate to the City of Earlham, Iowa and to the public a utility easement and road right-of-way over and across Outlots "A", "B", and "C" of the plat, and they hereby dedicate to the City of Earlham, Iowa and to the public a utility easement over and across all other land within the plat that is designated for public utility easement.

IN WITNESS WHEREOF, the said owners and proprietors, John H. Westphal, Janice L. Kirk, and the Patricia A. Spillers Trust, and Robert G. Kirk as spouse of Janice L. Kirk, have caused these presents to be executed this 13th day of September, 2000.

John H. Westphal
John H. Westphal

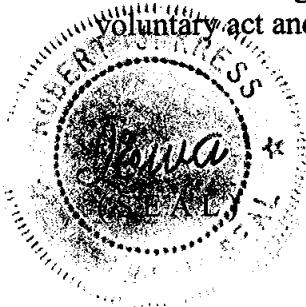
Janice L. Kirk
Janice L. Kirk

Peter P. Spillers
Peter P. Spillers, Trustee
Patricia A. Spillers Trust

Robert G. Kirk
Robert G. Kirk

STATE OF IOWA)
) SS
MADISON COUNTY)

On this 13th day of September, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John H. Westphal, Janice L. Kirk and Robert G. Kirk to me known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.



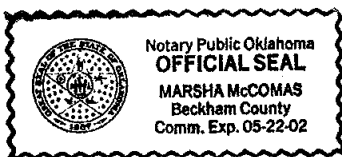
Robert G. Kirk
Notary Public in and for the State of Iowa.

STATE OF OKLAHOMA)
) SS
BECKHAM COUNTY)

On this 6th day of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter P. Spillers as Trustee of the Patricia A. Spillers Trust to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that such person, as such fiduciary, executed the same as the voluntary act and deed of such person and of such fiduciary.

Marsha McComas
Notary Public
in and for the State of Oklahoma.

(S E A L)



PEER, NELSON & BRALAND

ATTORNEYS AT LAW

115 E. FIRST STREET

P. O. BOX 370

EARLHAM, IOWA 50072

DEAN R. NELSON
SAMUEL H. BRALAND
MARTIN S. RAMSEY

H. CLAUDE PEER
(1910-1994)

TELEPHONE: (515) 758-2267

TELEPHONE: (515) 993-4674

FACSIMILE: (515) 758-2268

August 30, 2000

TITLE OPINION

City Council
City of Earlham, Iowa
140 South Chestnut Avenue
Earlham, Iowa 50072

I have examined the abstract of title to the following described real estate, to-wit:

Parcel "A", which was described as the East 37 rods and 17 links of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, now more particularly described as follows:

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from the root of title to the 28th day of August, 2000, at 8:00 A.M., as last continued by Madison County Abstract Company. I find good and merchantable title in fee simple to said real estate to be in:

John H. Westphal, Janice L. Kirk, and the Patricia A. Spillers Trust,

who are the proprietors of the plat. Title to said real estate is subject to the following:

1. Taxes. All real estate taxes against the property under examination are paid in full.

2. Zoning and Subdivision Ordinances. The real estate being platted is subject to the zoning and subdivision ordinances of the City of Earlham, Iowa which regulate and restrict the use of the real estate as well as any construction thereon.

3. Utility Easement. The abstract shows a municipal water pipeline easement granted to the City of Earlham, Iowa consisting of a strip of land thirty (30) feet in width over and across the West thirty (30) feet and the North thirty (30) feet of the real estate being platted. The easement was recorded on June 16, 1986 in Book 119, Page 695, in the Office of the Recorder of Madison County, Iowa.

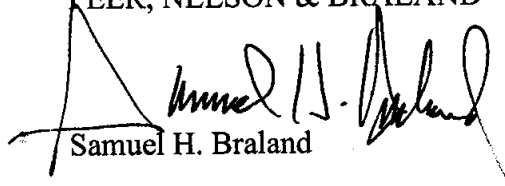
4. Caution. You are bound to take notice of the rights of persons actually in possession of the real estate and the right of materialmen and laborers to file claims for mechanic's liens by reason of having furnished material or labor in the improvement of the premises. Such claim of lien must be filed by a principal contractor within ninety days and by a subcontractor within sixty days from the date on which the last of the material was furnished or the last of the labor was performed. None appear to have been filed except such as may be mentioned in this opinion. The correctness of lot, acreage, and boundary lines is not assured by this opinion. In order to ascertain the correctness of lot, acreage, and boundary lines, it is necessary to have the premises surveyed by a qualified engineer. You should also determine the fence lines with adjoining landowners together with the right of drainage.

5. Environmental Caution. An abstract of title will not disclose the existence of hazardous wastes, underground storage tanks, drainage wells and other environmentally regulated activities. You are cautioned that federal, state and local legislation may, in the event there are environmental and/or public health violations, permit injunctive relief and require clean up such as removal and remedial actions. The costs of such clean up may be a lien against the property and a personal liability to the owner thereof. You

may have liability even though you may not have disposed of hazardous wastes on the property or used an underground storage tank or wells.

Respectfully submitted,

PEER, NELSON & BRALAND


Samuel H. Braland

SHB/cjv

Prepared By: Samuel H. Braland, P.O. Box 370, Earlham, Iowa 50072
Telephone (515) 758-2267.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WESTPHAL SUBDIVISION City of Earlham, Madison County, Iowa

THIS DECLARATION, is made this 13th day of September, 2000, by John H. Westphal, Janice L. Kirk, and the Patricia A. Spillers Trust, hereinafter called the "Declarants".

WITNESSETH:

WHEREAS, Declarants are the owners of real estate located in the City of Earlham, Madison County, Iowa, being platted and legally described as follows, and hereinafter called the "Property":

Parcel "A", which was described as the East 37 rods and 17 links of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, now more particularly described as follows:

Beginning at the East Quarter Corner of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, thence North 90°00'00" West 622.19 feet along the North line of the Southeast Quarter of said Section 6; thence South 00°12'37" East 1304.45 feet along the West line of the East 37 rods and 17 links of the Northeast Quarter of said Southeast Quarter which was the original West line of NE. Birch Avenue; thence South 89°54'33" East 620.01 feet along the South line of the Northeast Quarter of said Southeast Quarter; thence North 00°06'52" West 1305.43 feet along the East line of said Southeast Quarter to Point of Beginning containing 18.606 acres. Said Parcel "A" is divided into Outlot A which is present Birch Avenue right-of-way; Outlot B which is present NE. 6TH Street, right-of-way; Outlot C which is to be dedicated as additional Birch Avenue right-of-way; Outlot D which is future development area and lots numbered 1 through 4.

NOW, THEREFORE, Declarants hereby publish and declare that the lots located on the Property shall be held, sold and conveyed subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which shall run with the land and shall be a burden and a benefit to, and shall be binding upon the Declarants, their successors and assigns, and all parties acquiring or owning any right, title or interest in any part of the Property, and their heirs, successors, assigns, grantees, executors, administrators, and devisees:

**ARTICLE I
DEFINITIONS**

1. "Declarants" shall mean John H. Westphal, Janice L. Kirk and the Patricia A. Spillers Trust who have made and executed this Declaration, and their successors and assigns.

2. "Lot Owner" shall mean each person or entity who is a record owner of a fee or undivided fee interest in any lot located within the Property; provided, however, that in the event of the recording of a contract for the sale of a lot, the contract purchaser shall be deemed the lot owner; and provided further that in the event a fee interest of record is held merely for the security of the performance of an obligation, then the obligor in possession shall be deemed the lot owner.

3. "Property" shall mean the real estate above described constituting the subdivision known as WESTPHAL SUBDIVISION.

**ARTICLE II
COVENANTS AND RESTRICTIONS ON USE OF LOTS**

The Declarants for each lot owned within the Property hereby covenant, and each lot owner by acceptance of a deed or contract to any lot whether or not it shall be expressed in such deed or contract, is deemed to covenant and agree to the following restrictions, covenants and conditions which shall be applicable to each lot within the Property:

1. **Future Street.** At some time in the future a street that will lie adjacent to and immediately South of Lot 4 may be installed extending East from N.E. Birch Avenue into Outlot "D". The cost of installing the North one-half of such a street shall be borne by the owners of Lots 1, 2, 3, and 4 as set forth below. This obligation shall apply to the installation cost of the North one-half of one (1) such street only, and shall apply only to a street length of no greater than 170 feet:

- Lot 1: One-fourth of cost;
- Lot 2: One-fourth of cost;
- Lot 3: One-fourth of cost; and
- Lot 4: One-fourth of cost.

2. **Lift Station.** At some time in the future the City of Earlham may install a sewer lift station that will service lots in the subdivision. Each owner of Lot 1, 2, 3, and 4 in the subdivision shall proportionately share in the cost, as determined by the City of Earlham, of hooking-up to the system.

3. **Storm Water Runoff.** Whenever a dwelling or other structure is erected on Lot 1, 2, 3, or 4 in the subdivision, the owner of that lot shall grade the lot and/or install necessary berms or other devices on the lot so as to cause storm water runoff from Lots 1 and 2 to be directed to the North, and runoff from Lots 3 and 4 to be directed to the South.

4. **Prohibited Structures.** A mobile home or manufactured home as defined in the Code of Iowa or in the City of Earlham Code of Ordinances, or as otherwise defined or known, is prohibited everywhere on the Property and shall not be placed or erected on any lot therein.

5. **Permitted Structures.** Only the following structures may be erected, placed, or are permitted on any lot in the Property:

- (a) One single-family private dwelling house for use only as a private residence; and
- (b) Accessory structures such as garages and appropriate outbuildings.
- (c) A factory-built (modular) home as defined in the Code of Iowa or in the City of Earlham Code of Ordinances is permitted on the Property so long as it complies with the applicable building requirements set forth in paragraph 5.

6. **Building Requirements.**

- (a) **Single-Story Residences.** Single-story residences must have a ground floor finished area of not less than 1,100 square feet.
- (b) **One and One-Half Story Residences.** One and one-half story residences must have 1,000 square feet of finished area on the ground floor. The total finished area of the ground floor and the second floor must be not less than 1,400 square feet.
- (c) **Two-Story Residences.** Two-story residences must have 700 square feet of finished area on the ground floor, and the total finished area of the ground floor and the second floor must be not less than 1,400 square feet.
- (d) **Split-Level Residences and Split-Entry Residences.** Split-Level and Split-Entry residences must have 1,200 square feet of finished area on the level or levels directly under the roof, and a total finished floor area of not less than 1,800 square feet.
- (e) **Exclusions.** Garages, breezeways, porches, terraces, decks and patios shall not be deemed included in the finished area, irrespective of whether or not there may be living areas located above such non-living areas.
- (f) **Garages.** All dwellings must have at a minimum an attached or detached garage.

7. **Animals.** Cattle, sheep, swine, poultry, fowl, horses of any age, exotic or naturally aggressive animals, and pit bulls are prohibited everywhere on the Property. Customary domestic pets are permitted.

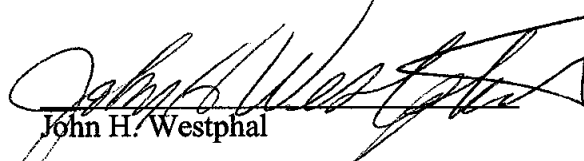
**ARTICLE III
ENFORCEMENT**

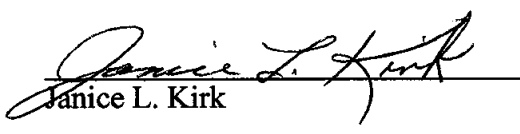
The City of Earlham, Iowa, any lot owner, lessee, agent or representative of a lot owner shall have the right and power to enforce the restrictions, covenants, and conditions contained herein, and to institute and prosecute any proceeding at law or in equity against any person or persons violating or threatening to violate any such restrictions, covenants, and conditions, and to recover any damages suffered from any violation thereof.


The waiver of any violation or failure to enforce any such covenant, condition or restriction shall not in any event operate as a waiver, impairment or abrogation of any covenant, restriction or condition, or the right to enforce the same in the event of any future or other breach of the same or any other covenant, restriction or condition by the same or any other person.

**ARTICLE IV
DURATION OF DECLARATION; AMENDMENTS**

This Declaration and the covenants, conditions and restrictions contained herein shall run with the land above described, and be binding upon all persons as provided herein for a period of 20 years from the date of its filing for record, after which time this Declaration and the covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years. This Declaration may be amended by an instrument signed by not less than a majority of lot owners. For this purpose, any lot under joint ownership shall be considered as one lot owner. Covenants 1, 2 and 3 of Article II may be amended only upon consent of the City of Earlham, Iowa.


John H. Westphal

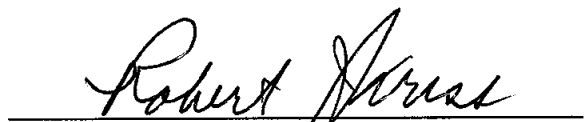

Janice L. Kirk


Peter P. Spillers, Trustee
Patricia A. Spillers Trust

STATE OF IOWA)
) SS
MADISON COUNTY)

On this 13th day of September, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John H. Westphal and Janice L. Kirk to me known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary and deed.



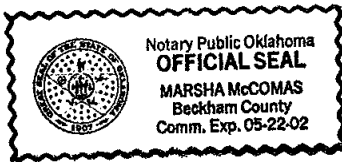

Notary Public in and for the State of Iowa.

STATE OF OKLAHOMA)
) SS
BECKHAM COUNTY)

On this 6th day of ~~September~~ ^{October}, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter P. Spillers as Trustee of the Patricia A. Spillers Trust to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that such person, as such fiduciary, executed the same as the voluntary act and deed of such person and of such fiduciary.

Marsha McComas
Notary Public
in and for the State of Oklahoma.

(SEAL)



WHEREAS, Outlots "A", "B", and "C" of said plat have been dedicated by the proprietors as a road right-of-way easement and a public utility easement and the dedication thereof should be approved.

WHEREAS, all other public utility easements as shown on the plat and the dedication thereof should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EARLHAM, IOWA:

That the final subdivision plat of the following described real estate, to-wit:

Parcel "A", which was described as the East 37 rods and 17 links of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5TH P.M., City of Earlham, Madison County, Iowa, now more particularly described as follows:

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designated and to be known as:

WESTPHAL Subdivision, an Official Plat in the City of Earlham, Madison County, Iowa,

be and the same is hereby accepted and approved, and the Mayor and City Clerk of the City of Earlham, be and they are hereby authorized to certify this resolution which shall be recorded with the plat.


That the dedication of road right-of-way and utility easement over and across Outlots "A", "B" and "C" of the plat should be and the same are hereby approved and accepted.

That the dedication of all other public utility easements as designated on the plat is hereby approved and accepted.

That the Public Improvement Agreement entered into by and between the City and the proprietors be and the same is hereby accepted and approved and the signature thereto by the Mayor and City Clerk is hereby ratified and approved.

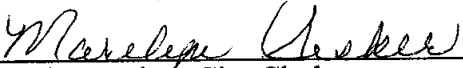
That the Declaration of Covenants, Conditions and Restrictions as submitted by the proprietors be and the same are hereby accepted and approved.

PASSED AND APPROVED, on the 14th day of August, 2000.

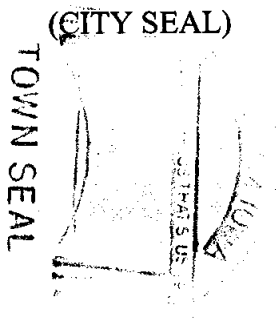


Dan von Rentzell, Mayor
City of Earlham, Iowa.

ATTEST:



Marilyn Sesker, City Clerk
City of Earlham, Iowa.



FOR DEDICATION,
RESOLUTION &
CERTIFICATES, SEE
DEED RECORD 64-342

FILED NO. 7087
BOOK 2 PAGE 459
2000 NOV 17 PM 3:40

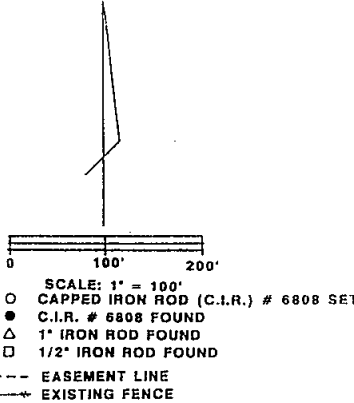
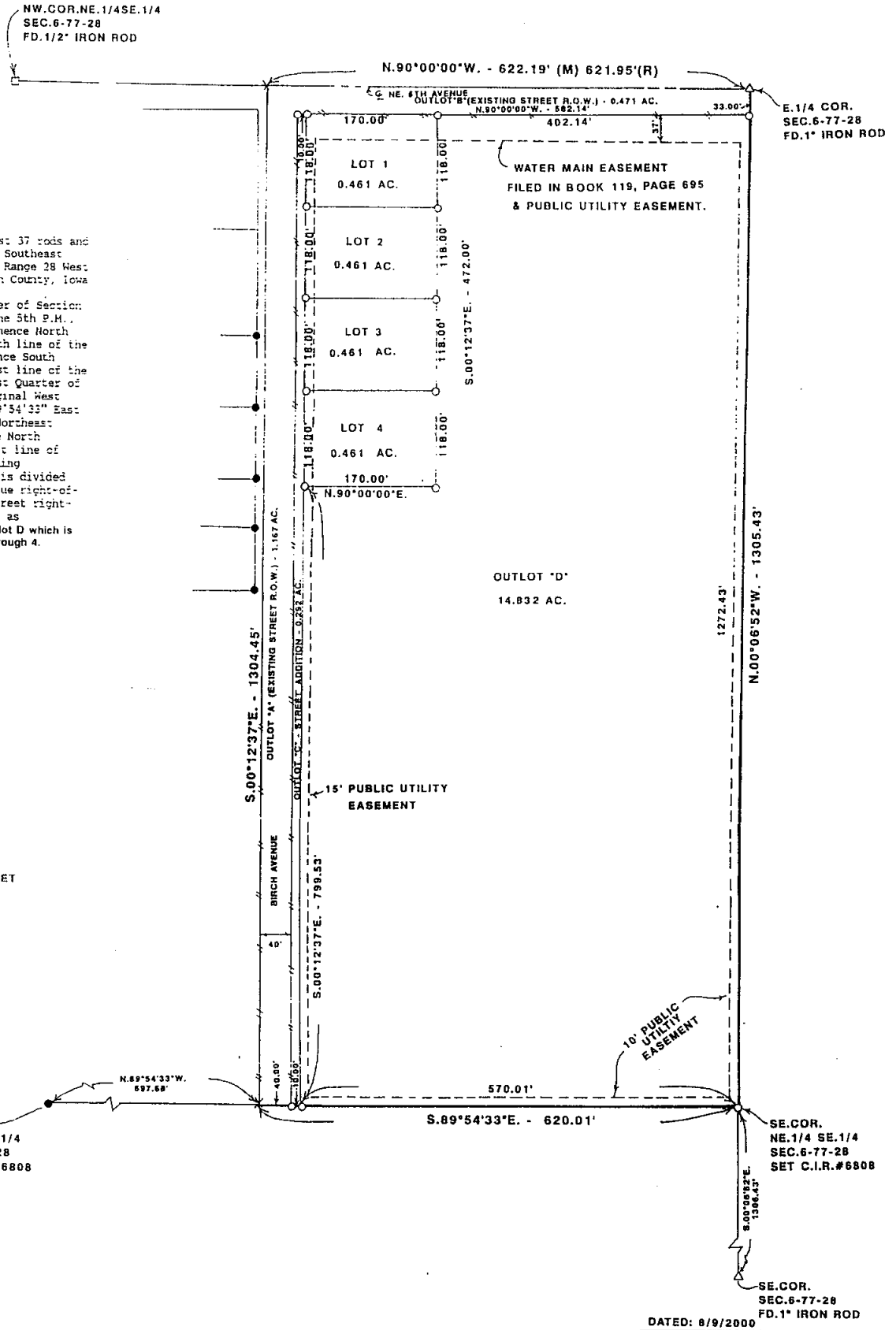
MICKI UTSLER
RECORDER
MADISON COUNTY, IOWA

VANCE & HOCHSTETLER, P.C. CONSULTING ENGINEERS, WINTERSET, IOWA (515) 462-3995
CHARLES T. VANCE, 110 WEST GREEN ST., WINTERSET, IOWA 50273
JAMES M HOCHSTETLER, 110 WEST GREEN ST., WINTERSET, IOWA 50273

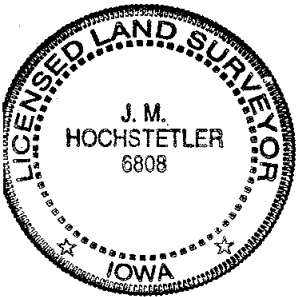
FINAL PLAT WESTPHAL SUBDIVISION

LEGAL DESCRIPTION:

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ZONED RESIDENTIAL
BUILDING SET BACKS
FRONT = 30'
REAR = 35'
SIDE = 8'
LOT 4 TO HAVE 30' SET BACK
ON BOTH SOUTH & WEST SIDE.



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 Land Surveyor under the laws of the State of Iowa.
J. M. Hochstetler
J. M. HOCHSTETLER
License number 6808 Date 11/10/2000
My license renewal date is December 31, 2001
Pages or sheets covered by this seal: 1

NAME: OWNER ADDRESS
JANICE L. KIRK
602 6TH STREET PLACE SE.
ALTOONA, IOWA 50009

DATED: 8/9/2000
FINAL PLAT
WESTPHAL SUBDIVISION
CITY OF EARLHAM, MADISON COUNTY, IOWA
OWNER/SUBDIVIDER:
JOHN H. WESTPHAL
JANICE L. KIRK
&
THE ESTATE OF PATRICIA A. SPILLERS
VANCE & HOCHSTETLER, P.C.
CONSULTING ENGINEERS
110 WEST GREEN STREET
WINTERSET, IOWA 50273