

FOR PLAT SEE
RECORD 2004, PAGE 5025

**PLAT AND CERTIFICATE
FOR
BIRCHWOOD ESTATES PLAT NO.1
AN ADDITION TO THE CITY OF WINTERSET,
MADISON COUNTY, IOWA**

| | |
|----------|-------------------------------------|
| COMPUTER | <input checked="" type="checkbox"/> |
| RECORDED | <input checked="" type="checkbox"/> |
| COMPARED | <input type="checkbox"/> |

I, Robert Hendricks, Zoning Administrator of the City of Winterset, Iowa, do hereby certify that the Plat to which this certificate is attached is a plat of a subdivision know and designated as Birchwood Estates Plat No. 1, an Addition to the City of Winterset, Madison County, Iowa; and, that the real estate comprising said plat is described as follows:

A portion of Parcel "N" in the Northwest Quarter of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa more particularly described as follows:

Commencing at the West Quarter Corner of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa; thence North 00°09'54" West 1001.94 feet along the West line of the Northwest Quarter of said Section 36 to the Point of Beginning; thence continuing North 00°09'54" West 1498.61 feet along said West line to a point on the South right-of-way line of Iowa Highway No. 92; thence South 71°46'07" East 34.93 feet along said right-of-way line; thence North 27°05'26" East 98.95 feet along said right-of-way line; thence North 86°24'49" East 227.66 feet along said right-of-way line; thence North 85°43'23" East 125.67 feet along said right-of-way line; thence South 76°48'36" East 11.35 feet along said right-of-way line; thence South 85°23'28" East 600.97 feet along said right-of-way line; thence South 89°56'28" East 778.70 feet along said right-of-way line to the Northeast Corner of Parcel "N"; thence South 00°16'34" East 1344.22 feet along the East line of Parcel "N"; thence South 89°53'24" West 758.20 feet; thence South 00°16'34" West 200.00 feet; thence South 89°53'24" West 1064.48 feet to the Point of Beginning containing 61.776 acres. Plat No. 1 is composed of Blocks 1 through 6, Lot A which is 16th Avenue right-of-way and Lot B which is the remainder of street right-of-ways within the Subdivision.

I do further certify that attached hereto are true and correct copies of the following documents which have been submitted in connection with said plat.

1. Dedication of Plat of Birchwood Estates Plat No. 1, an Addition to the City of Winterset, Madison County, Iowa;
2. Mortgagee's Consent to Plat from Peoples Trust and Savings Bank;
3. Attorney's Opinion;
4. Certificate of County Treasurer of Madison County, Iowa;
5. Resolution of the City Council of the City of Winterset approving said plat, all of which are duly certified in accordance with the Winterset Zoning Ordinance;
6. Building Restrictions and Protective Covenants;
7. Groundwater Hazard Statement;

All of which are duly certified in accordance with the Winterset Zoning Ordinance; and dated this 28th day of OCTOBER, 2004.

Robert D. Hendricks
Robert Hendricks, Zoning Administrator

STATE OF IOWA, MADISON COUNTY, ss:

On this 22nd day of October, 2004, before me, the undersigned, a Notary Public in and for the said State, personally appeared, Robert Hendricks, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



Cindy M. Bush
Notary Public in and for the State of Iowa

DEDICATION AND CONSENT TO PLAT

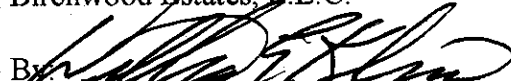
KNOW ALL MEN BY THESE PRESENTS:

That Birchwood Estates, L.L.C., an Iowa limited liability company, does hereby acknowledge and declare that the platting of the following described real estate, situated in Winterset, Iowa, to-wit:

See Exhibit "A" attached hereto and made a part hereof into lots and streets, as shown by the attached plat, to be known as Birchwood Estates Plat No. 1, City of Winterset, Madison County, Iowa, is with the free consent and in accordance with the desires and wishes of the undersigned. The undersigned dedicates to the public all streets and public easements as shown on said Plat.

IN WITNESS WHEREOF, Birchwood Estates, L.L.C. has caused this instrument to be executed this 14th day of October, 2004.

Birchwood Estates, L.L.C.

By: 
William E. Kline, Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of October, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared William E. Kline to me personally known, who being by me duly sworn, did say that the Manager of said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its members; and that the said William E. Kline acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.

Jan Heiland
Jan Heiland

Notary Public
in and for the State of Iowa

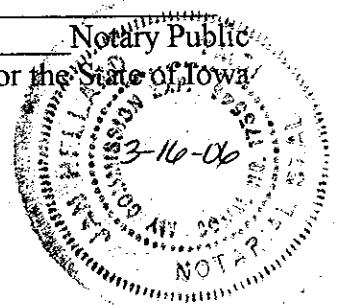


Exhibit "A"

A portion of Parcel "N" in the Northwest Quarter of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa more particularly described as follows:

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Prepared by: David D. Nelson, 213 N. Ankeny Blvd., Ste. 100, Ankeny, IA 50021 (515) 964-3633

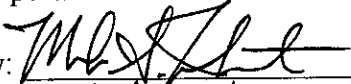
MORTGAGEE'S CONSENT TO PLAT

The undersigned hereby states, acknowledges and certifies that Peoples Trust & Savings Bank, is the holder of a Mortgage on certain real estate described as follows, to-wit:

See Exhibit "A" attached hereto and by this reference incorporated herein that is to be subdivided and platted as Birchwood Estates Plat No. 1, City of Winterset, Madison County, Iowa, and which Mortgage was recorded March 17, 2004, in Book 2004 Page 1142 in the Madison County Recorder's Office. The platting of the real estate described above is done so with the free consent and in accordance with the desire of said Mortgagee.

Dated this 14th day of October 2004.

Peoples Trust & Savings Bank, an Iowa corporation

By: 
Mark B. Johnston, (name)
Vice President, (title)

STATE OF IOWA)
)
COUNTY OF Dallas)

ss:

On this 14th day of October 2004, before me, a Notary Public in and for the State of Iowa, personally appeared Mark S. Johnston, to me personally known, who being by me duly sworn, did say that he is the Vice President of said corporation; that said instrument was signed on behalf of said Corporation by authority of its Board of Directors; and that the said Mark S. Johnston as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by him voluntarily executed.



Joleen R. Draisey
Notary Public

Exhibit "A"

A portion of Parcel "N" in the Northwest Quarter of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa more particularly described as follows:

Commencing at the West Quarter Corner of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa; thence North $00^{\circ}09'54''$ West 1001.94 feet along the West line of the Northwest Quarter of said Section 36 to the Point of Beginning; thence continuing North $00^{\circ}09'54''$ West 1498.61 feet along said West line to a point on the South right-of-way line of Iowa Highway No. 92; thence South $71^{\circ}46'07''$ East 34.93 feet along said right-of-way line; thence North $27^{\circ}05'26''$ East 98.95 feet along said right-of-way line; thence North $86^{\circ}24'49''$ East 227.66 feet along said right-of-way line; thence North $85^{\circ}43'23''$ East 125.67 feet along said right-of-way line; thence South $76^{\circ}48'36''$ East 11.35 feet along said right-of-way line; thence South $85^{\circ}23'28''$ East 600.97 feet along said right-of-way line; thence South $89^{\circ}56'28''$ East 778.70 feet along said right-of-way line to the Northeast Corner of Parcel "N"; thence South $00^{\circ}16'34''$ East 1344.22 feet along the East line of Parcel "N"; thence South $89^{\circ}53'24''$ West 758.20 feet; thence South $00^{\circ}16'34''$ West 200.00 feet; thence South $89^{\circ}53'24''$ West 1064.48 feet to the Point of Beginning containing 61.776 acres. Plat No. 1 is composed of Blocks 1 through 6, Lot A which is 16th Avenue right-of-way and Lot B which is the remainder of street right-of-ways within the Subdivision.

WHITFIELD & EDDY P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

213 N. Ankeny Blvd, Ste 100
Ankeny, Iowa 50021-1749
Telephone: 515-964-3633
Facsimile 515-964-3692
www.whitfieldlaw.com

| | | | | | |
|------------------------|----------------------|-----------------------|-----------------------|----------------------|---------------------|
| Mark R. Gray | Kevin M. Reynolds | John F. Fatino | Theodore C. Simms, II | West Des Moines: | Of Counsel: |
| David D. Nelson | Thomas H. Burke | Jason M. Casini | Christine C. Cownie | John A. Templer, Jr. | Harley A. Whitfield |
| | Thomas Henderson | Roscoe A. Ries, Jr. | Jon E. Kramer | Greg A. Naylor | Timothy J. Walker |
| Des Moines: | Megan M. Antenucci | J. Campbell Helton | Kara M. Sinnard | Maureen Roach Tobin | Wendy Carlson |
| Gary Gately | Thomas S. Reavely | Sally A. Reavely | B. MacPaul Stanfield | Jeffrey D. Stone | Dennis R. |
| David L. Phipps | Gary A. Norton | Anjela A. Shutts | | Stephen D. Marso | Thompson |
| Benjamin B. Ullem | Frank M. Grenard | Stephen E. Doohen | Mt. Pleasant: | Jeffrey D. Ewoldt | |
| Robert L. Fanter | Ron Adams | Sean A. Pelletier | Philip McCormick | | Retired: |
| Bernard L. Spaeth, Jr. | Mark V. Hanson | John Hoffman | Danny L. Cornell | | John. C. Eddy |
| William L. Fairbank | August B. Landis | Thomas G. Fisher, Jr. | Alanson F. Elgar, | | A. Roger Witke |
| Robert G. Bridges | G. Mark Rice | Marc T. Beltrame | of Counsel | | |
| Jaki K. Samuelson | Richard J. Kirschman | Drew J. Gentsch | | | |

October 13, 2004

E-Mail
nelson@whitfieldlaw.com

City of Winterset, Iowa
City Hall
124 West Court Avenue
Winterset, IA 50273

This is to certify that I have examined an Abstract of Title commencing with the date of root of title entry and ending with Abstract No. 367628185 prepared by Madison County Company. Those who prepared the last continuation of this Abstract of Title have certified that it reflects all matters up to September 27, 2004, at 8:00 a.m. and relating to the following property:

See Exhibit "A" attached hereto and by this reference made a part hereof, to be known as:

Birchwood Estates Plat No. 1, City of Winterset, Madison County, Iowa

As of that date and time, we find from our examination that good and marketable title to the property described above is held by:

Birchwood Estates, L.L.C.

EXCEPT THAT we also find certain matters which affect title as listed below:

1. **MORTGAGE.** The abstract shows a mortgage in the principal sum of \$1,700,000.00 from Birchwood Estates, L.L.C., to Peoples Trust & Savings Bank, dated March 15, 2004, and filed March 17, 2004, in Book 2004 Page 1142 of the Madison County records.
2. **EASEMENT.** The abstract shows a Utility Easement Agreement between Birchwood Estates, L.L.C. and the City of Winterset, Iowa, dated March 23, 2004, and filed May 20, 2004, in Book 2004 Page 2339 of the Madison County records.

WHITFIELD & EDDY P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

Page 2

October 13, 2004

3. **EASEMENT.** The abstract shows a Right of Way Permit to Northwestern Bell Telephone Company for telephone and telegraph lines filed in Deed Record Book 37, Page 484 of the Madison County records.

4. **REAL ESTATE TAXES.** All real estate taxes, including the 2003/2004 fiscal year taxes are paid in full.

5. **OTHER MATTERS.** There are no other encumbrances, judgments, special assessments or other liens affecting the property.

This opinion is given for platting purposes pursuant to Section 354.11(3) of the Code of Iowa.

Respectfully submitted,

WHITFIELD & EDDY, P.L.C.

By



David D. Nelson

Exhibit "A"

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CERTIFICATE OF TREASURER OF MADISON COUNTY, IOWA

STATE OF IOWA)
)
COUNTY OF MADISON) ss:

I, Jo Anne Collins, Treasurer of Madison County, having examined the records of my office, in accordance with the provisions of Section 354.11, Iowa Code, 2003, as amended, pertaining to real properties legally described as follows:

See Exhibit "A" attached hereto

To be hereinafter designated as Birchwood Estates Plat No. 1, an Official Plat, City of Winterset, Madison County, Iowa, does hereby certify that same is free from real estate taxes, special assessments and special rates and charges.

Dated at Winterset, Iowa, this 15 day of October, 2004.

MADISON COUNTY TREASURER

By: Jo Anne Collins
Treasurer

Subscribed and sworn to before me this 15 day of October, 2004.



Catherine A. Weltha
Notary Public in and for the State of Iowa

Exhibit "A"

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**RESOLUTION APPROVING FINAL PLAT
OF
BIRCHWOOD ESTATES PLAT NO. 1,
AN ADDITION TO THE CITY OF WINTERSET,
MADISON COUNTY, IOWA**

WHEREAS, there was filed in the office of the Zoning Administrator of the City of Winterset, a registered land surveyor's plat of a proposed subdivision know as Birchwood Estates Plat No. 1, an Addition to the City of Winterset, Madison County, Iowa; and

WHEREAS, the real estate comprising said Plat is described as follows:

A portion of Parcel "N" in the Northwest Quarter of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa more particularly described as follows:

Commencing at the West Quarter Corner of Section 36, Township 76 North, Range 28 West of the 5th P.M., City of Winterset, Madison County, Iowa; thence North 00°09'54" West 1001.94 feet along the West line of the Northwest Quarter of said Section 36 to the Point of Beginning; thence continuing North 00°09'54" West 1498.61 feet along said West line to a point on the South right-of-way line of Iowa Highway No. 92; thence South 71°46'07" East 34.93 feet along said right-of-way line; thence North 27°05'26" East 98.95 feet along said right-of-way line; thence North 86°24'49" East 227.66 feet along said right-of-way line; thence North 85°43'23" East 125.67 feet along said right-of-way line; thence South 76°48'36" East 11.35 feet along said right-of-way line; thence South 85°23'28" East 600.97 feet along said right-of-way line; thence South 89°56'28" East 778.70 feet along said right-of-way line to the Northeast Corner of Parcel "N"; thence South 00°16'34" East 1344.22 feet along the East line of Parcel "N"; thence South 89°53'24" West 758.20 feet; thence South 00°16'34" West 200.00 feet; thence South 89°53'24" West 1064.48 feet to the Point of Beginning containing 61.776 acres. Plat No. 1 is composed of Blocks 1 through 6, Lot A which is 16th Avenue right-of-way and Lot B which is the remainder of street right-of-ways within the Subdivision.

WHEREAS, there was also filed with said plat a dedication of said plat containing a statement to the effect that the subdivision, as is appears on the plat, is with the free consent and in accordance with the desire of the proprietor Birchwood Estates, L.L.C.

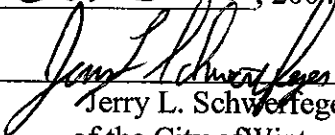
WHEREAS, said Plat was accompanied by a complete abstract of title and an opinion from the attorney at law showing that title is fee simple in said proprietor and that the platted land is free from encumbrance, and a certified statement from the Treasurer of Madison County, Iowa, that said platted land is free from taxes; and

WHEREAS, the City Council of the City of Winterset, Iowa, finds that said Plat conforms to the provisions of the Zoning Ordinance of the City of Winterset and the plat, papers and documents presented therewith should be approved by the City Council; and, that said Plat, know as Birchwood Estates Plat No. 1, an Addition to the City of Winterset, Madison County, Iowa, should be approved by the City Council of the City of Winterset, Iowa.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Winterset, Iowa;

1. That said Plat, known as Birchwood Estates Plat No. 1, an Addition to the City of Winterset, Madison County, Iowa, prepared in connection with said plat and subdivision, is hereby approved.
2. The Zoning Administrator of the City of Winterset, Iowa, is hereby directed to certify this Resolution which shall be affixed to said Plat to the County Recorder of Madison County, Iowa; and attend to the filing and recording of the plat, papers and documents which should be filed and recorded in connection therewith.

Dated at Winterset, Iowa, this 22nd day of OCTOBER, 2000.



Jerry L. Schwerfeger, Mayor
of the City of Winterset

ATTEST:



Mark Nitchals, City Clerk



Prepared by: David D. Nelson, 213 N. Ankeny Blvd., Ste. 100, Ankeny, IA 50021 (515) 964-3633

**BUILDING RESTRICTIONS AND
PROTECTIVE COVENANTS
FOR BIRCHWOOD ESTATES PLAT No. 1**

KNOW ALL MEN BY THESE PRESENTS:

That Birchwood Estates, L.L.C., an Iowa limited liability company ("Declarant") of Polk County, Iowa, being the owner of the following premises situated in Winterset, Madison County, Iowa, to wit:

Lots 1 through 8 in Block 2; Lots 1 through 8 in Block 3, Lots 1 through 20 in Block 4 and Lots 1 through 9 in Block 5 in Birchwood Estates Plat No. 1, an Official Plat, now included in and forming a part of the City of Winterset, Iowa

does hereby establish and place the following building restrictions and protective covenants upon said premises, to wit:

- (a) All lots described herein shall be known, described and used solely as residential building lots, and no structure shall be erected on any residential building lot other than detached single-family dwellings not to exceed two and one-half stories in height. All dwellings must have a minimum of 1,200 square feet of finished area directly under the roof, exclusive of attached garages, breezeways, porches and finished basement areas.
- (b) All dwellings must have a minimum of a 5/12 pitched roof.
- (c) Building setback lines, as shown on the plat of record, shall be strictly followed and public easements, as shown on the recorded plat, are hereby reserved for installation and maintenance of such facilities as may be located within, on, under or over said easements.
- (d) No trailer, camper, truck, bus, boat, motor home or other similar type of recreational vehicle shall be parked or stored on any lot or street in said plat unless screened from view from the public.
- (e) No trailer, basement, tent, shack, garage, barn or other building erected on any lot shall, at any time, be used as a residence, either temporarily or permanently, nor

shall any residence of a temporary character be permitted. No residence shall be occupied until the exterior thereof has been completed and all exterior wood painted or finished.

- (f) No structure shall be moved onto any lot in said plat.
- (g) Titleholder(s) or each lot, vacant or improved, shall keep the lot free of weeds and debris.
- (h) No obnoxious or offensive trade shall be carried on upon any lot nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.
- (i) No exterior towers or antennas of any kind shall be constructed, modified, or permitted on the ground of any building lot, except as provided for herein. Reasonable television and radio antennas may be attached to the dwelling or garage provided the antenna's location shall be restricted to the rear of the house or garage, or to the rear of the roof ridgeline so as to be hidden from sight when viewed from the front street. A satellite dish antenna having a diameter of one meter or less may be placed on the rear of a building lot provided it is totally screened and not visible from street view.
- (j) Reasonable shrubbery or decorative fence or both shall, properly screen any dog run, trash receptacle, tool shed, or other outbuilding of like nature.
- (k) Construction of the dwelling must commence no later than 12 months from the transfer of ownership of a lot by the Declarant, and must be completed no later than 12 months following commencement of construction.
- (l) These covenants, restrictions and provisions are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-one years after the date they are recorded in the Madison County Recorder's Office, and may be renewed for successive twenty-one year periods by recording a written notice as provided in Iowa Code § 614.24, as amended. This Declaration may be amended by an instrument signed (i) by the Declarant as long as the Declarant owns a Lot primarily for resale purposes, or (ii) by not less than fifty percent (50%) of the Lot owners if the Declarant does not own a Lot. Any amendment must be recorded.
- (m) If the parties hereto, or any of them, or their heirs or assigns shall violate any of the covenants or restrictions herein, it shall be lawful for any person or persons owning any other lots in said plat to prosecute any proceedings at law or in said equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him from so doing or to recover damages or other dues for such violations.
- (n) Invalidation of anyone of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

(o) The purpose of these building restrictions and protective covenants is to enhance and protect the value, attractiveness, and desirability of the premises.

(p) The purpose of these building restrictions and protective covenants is to enhance and protect the value, attractiveness, and desirability of the premises.

Dated this 14th day of October, 2004.

Birchwood Estates, L.L.C.

By: *William E. Kline*
William E. Kline, Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of October, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared William E. Kline to me personally known, who being by me duly sworn, did say that the Manager of said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its members; and that the said William E. Kline acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.

Jan Helland
Jan Helland Notary
Public in and for the State of Iowa

