



# PLAT AND CERTIFICATE FOR HILLCREST SUBDIVISION MADISON COUNTY, IOWA

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RECORDED	<input checked="" type="checkbox"/>
COMPARED	<input type="checkbox"/>

FOR PLAT, SEE  
RECORD 2005-5028

I, C. J. Nicholl, Zoning Administrator of Madison County, Iowa, do hereby certify that the plat to which this certificate is attached is a plat of a subdivision known and designated as Hillcrest Subdivision, and that the real estate comprising said plat is described as follows:

Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77°06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

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:

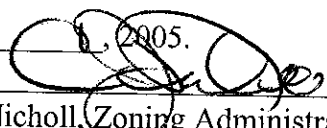
1. Dedication of Plat of Hillcrest Subdivision;
2. Attorney's opinion;
3. Certificate of County Treasurer of Madison County, Iowa;
4. Ground Water State;
5. Consent to Platting by Merchants Bank National Association;
6. Resolution of the Board of Supervisors of Madison County, Iowa, approving said plat;

7. Agreement with County Engineer; and

8. Declaration of Covenants, Conditions and Restrictions.

all of which are duly certified in accordance with the Madison County Zoning Ordinance.

Dated this 26<sup>th</sup> day of April, 2005.

  
\_\_\_\_\_  
C. J. Nicholl, Zoning Administrator of Madison  
County, Iowa

**DEDICATION OF PLAT  
OF  
HILLCREST SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

That David R. Merriam and Carol G. Merriam, do hereby certify that they are the sole owners and proprietors of the following-described real state:

Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77° 06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

That the subdivision of the above-described real estate as shown by the final plat of Hillcrest Subdivision is with the free consent and in accordance with the owners' desire as owners of said real estate.

DATED this 17 day of February, 2005.

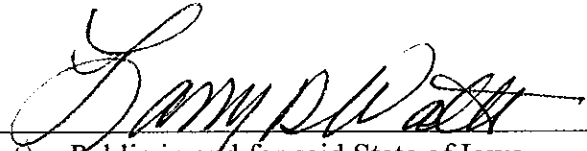
  
David R. Merriam

  
Carol G. Merriam

STATE OF IOWA, COUNTY OF MADISON

This instrument was acknowledged before me on this 17 day of February 2005 by David R. Merriam and Carol G. Merriam.



  
Notary Public in and for said State of Iowa

the principal amount of \$214,400.00, dated September 8, 2003, and filed September 12, 2003, in Book 2003, Page 5480, of the Recorder's Office of Madison County, Iowa. This mortgage has been assigned by Mortgage Assignment to Merchants Bank National Association by assignment which is not dated, but which is filed September 12, 2003, in Book 2003, Page 5481, of the Recorder's Office of Madison County, Iowa.

The abstract shows the following easements:

- a. An easement to Northwestern Bell Telephone Company, dated April 19, 1967 and filed May 2, 1967, in Deed Record 94, Page 463, of the Recorder's Office of Madison County, Iowa, granting an easement to construct, operate, maintain, replace and remove communication systems.
- b. An underground electric line easement to MidAmerican Energy Company, dated July 30, 1997, and filed August 15, 1997, in Deed Record 137, Page 823, of the Recorder's Office of Madison County, Iowa, granting an easement to lay, maintain, operate, repair and remove underground conduit wires, communication lines, or cable and other necessary equipment.
- c. An easement to Warren Water District, dated June 7, 2002, and filed June 15, 2002, in Book 2002, Page 3436, of the Recorder's Office of Madison County, Iowa, granting an easement to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, replace and remove waterline and necessary appurtenances.

The abstract shows a Warranty Deed to Madison County, Iowa, dated May 25, 1967 and

filed June 5, 1967, in Deed Record 94, Page 475, of the Recorder's Office of Madison County, Iowa,  
conveying a tract containing 1.25 acres more or less for highway proposes.

Respectfully submitted,

JORDAN, OLIVER & WALTERS, P.C.

By *Jerrold B. Oliver*

Jerrold B. Oliver

Farmers & Merchants Bank Bldg.

P.O. Box 230

Winterset, Iowa 50273

Telephone: (515) 462-3731

ATTORNEYS FOR DAVID R. MERRIAM AND  
CAROL G. MERRIAM

**ATTORNEY'S OPINION FOR FINAL PLAT, HILLCREST SUBDIVISION**

I, Jerrold B. Oliver, an attorney at law licensed to practice under the laws of the State of Iowa, have examined the abstract of title in one (1) part, last certified to January 27, 2005, at 8:00 a.m., by Security Abstract & Title Co., Inc., purporting to show the chain of title to the following described real estate, which is the real property contained in Final Plat, Hillcrest Subdivision, Madison County, Iowa:

Parcel A located in the East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter ( $\frac{1}{4}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of said Section Ten (10); thence on an assumed bearing of South  $00^{\circ}27'34''$  West along the West line of said East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) a distance of 245.00 feet to the point of beginning; thence North  $90^{\circ}00'00''$  East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of  $19^{\circ}14'34''$ , and a chord 425.62 feet in length bearing South  $77^{\circ}06'19''$  East; thence South  $00^{\circ}06'52''$  West 975.79 feet; thence North  $88^{\circ}38'48''$  West 314.57 feet; thence South  $00^{\circ}54'43''$  West 358.16 feet; thence South  $40^{\circ}22'12''$  East 118.00 feet; thence; North  $90^{\circ}00'00''$  West 1021.99 feet to the West line of the East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of said Section Ten (10); thence North  $00^{\circ}27'34''$  East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

In my opinion, merchantable title to the above described property is in the name of David R. Merriam and Carol G. Merriam, Husband and Wife, as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common, free and clear of all liens and encumbrances, except a mortgage from David R. Merriam and Carol G. Merriam, Husband and Wife, as Joint Debtors to Union State Bank in

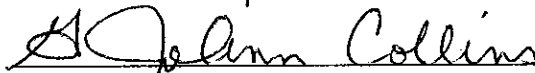
# CERTIFICATE OF THE COUNTY TREASURER OF MADISON COUNTY, IOWA

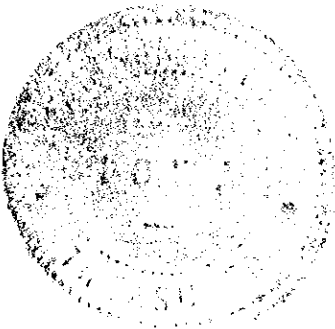
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I, G. JoAnn Collins, do hereby certify that I am the duly elected and acting Treasurer of Madison County, Iowa; that I have examined the records in my office, and that there are no unpaid taxes forming a lien against the following-described real estate, to-wit:

Parcel A located in the East Half (½) of the Northeast Quarter (¼) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (¼) of the Northeast Quarter (¼) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (½) of the Northeast Quarter (¼) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77° 06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (½) of the Northeast Quarter (¼) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

DATED at Winterset, Iowa, this 23 day of March, 2005.

  
G. JoAnn Collins, Treasurer of Madison County,  
Iowa



**CONSENT TO PLATTING  
BY UNION STATE BANK**

Union State Bank does consent to the platting and subdivision of the following-described real estate:

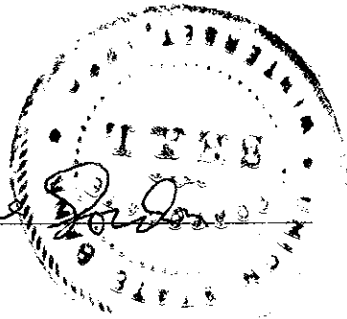
Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77°06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

in accordance with the ordinances of Madison County, Iowa, and the laws of the State of Iowa. the State of Iowa. The undersigned holds a mortgage against said real estate.

Dated this 17<sup>th</sup> day of Feb., 2005.

Union State Bank

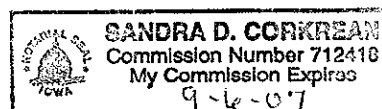
By [Signature]



STATE OF IOWA, COUNTY OF MADISON

This instrument was acknowledged before me on this 17<sup>th</sup> day of Feb, 2005 by Quane Gordon as Vice President of Union State Bank.

Sandra D. Corkrean  
Notary Public in and for said State of Iowa





**CONSENT TO PLATTING  
BY MERCHANTS BANK NATIONAL ASSOCIATION**

Merchants Bank National Association does consent to the platting and subdivision of the following-described real estate:

Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77° 06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

in accordance with the ordinances of Madison County, Iowa, and the laws of the State of Iowa. the State of Iowa. The undersigned holds a mortgage against said real estate.

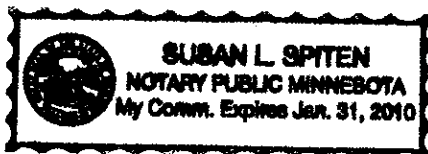
Dated this 24<sup>th</sup> day of February, 2005.

Merchants Bank National Association  
By Martha Grimes, Sr VP

STATE OF Minnesota, COUNTY OF Winona

This instrument was acknowledged before me on this 24th day of February, 2005 by Martha Grimes as Sr. Vice Pres. of Merchants Bank National Association.

Susan L Spiten  
Notary Public in and for said State



**RESOLUTION APPROVING FINAL PLAT  
OF HILLCREST SUBDIVISION  
MADISON COUNTY, IOWA**

WHEREAS, there was filed in the Office of the Zoning Administrator of Madison County, Iowa, a registered land surveyor's plat of a proposed subdivision known as Hillcrest Subdivision; and

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

Parcel A located in the East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter ( $\frac{1}{4}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77°06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half ( $\frac{1}{2}$ ) of the Northeast Quarter ( $\frac{1}{4}$ ) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

WHEREAS, there was also filed with said plat a dedication of said plat containing a statement to the effect that the subdivision as it appears on the plat is with the free consent and in accordance with the desire of the proprietors, David R. Merriam and Carol G. Merriam, Inc.; and


WHEREAS, said plat was accompanied by a complete abstract of title and an opinion from an attorney at law showing that title in fee simple is in said proprietors and that the platted land is free from encumbrance, and certified statements from the Treasurer of Madison County, Iowa, that said platted land is free from taxes, and the Clerk of the District Court of Madison County, Iowa, that said land is free from all judgments, attachments, mechanic's or other liens, and the Recorder of Madison County, Iowa, that title in fee simple is in said proprietors and is free from encumbrance except a mortgage to Polk County Bank; and

WHEREAS, the Board of Supervisors, Madison County, Iowa, finds that said plat conforms to the provisions of the Zoning Ordinance of Madison County, Iowa, and that the plat, papers and documents presented therewith should be approved by the Board of Supervisors, and that said plat, known as Hillcrest Subdivision should be approved by the Board of Supervisors, Madison County, Iowa.

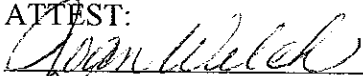
NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, Madison County,  
Iowa:

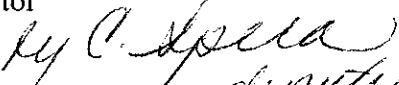
1. That said plat, known as Hillcrest Subdivision prepared in connection with said plat and subdivision is hereby approved.
2. The Zoning Administrator of Madison County, Iowa, is hereby directed to certify this resolution which shall be affixed to said plat to the County Recorder of Madison County, 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 26 day of April, 2005.

  
Steve Raymond, Chairman, Board of Supervisors,  
Madison County, Iowa

ATTEST:

  
Madison County Auditor

  
deputy

**AGREEMENT**

This Agreement, made and entered into, by and between, the proprietors of Hillcrest Subdivision and Todd Hagan, Madison County Engineer.



NOW THEREFORE IT IS AGREED AS FOLLOWS:

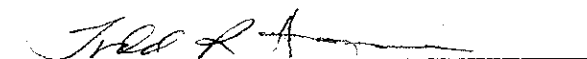
1. The proprietors of Hillcrest Subdivision, a Plat of the following described real estate:

Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77° 06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

hereby agree that all private roads located within Hillcrest Subdivision are private roads and are not being dedicated to Madison County, Iowa. Said proprietors consent and agree that such roads shall not be maintained in any manner by Madison County, Iowa, or the Madison County Engineer's Department.

PROPRIETORS HILLCREST SUBDIVISION

  
David R. Merriam  
  
Carol G. Merriam

  
Todd Hagan, Madison County Engineer

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
HILLCREST SUBDIVISION**

**THIS DECLARATION** is made on the date set forth below by **David R. Merriam and Carol G. Merriam**, husband and wife, hereinafter referred to as **Declarant**;

**WITNESSETH:**

**WHEREAS, Declarant** is the owner of certain real estate in Madison County, Iowa located in the Parcel A located in the East Half (1/2) of the Northeast Quarter (1/4) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa, described as follows: Commencing at the Northwest corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Ten (10); thence on an assumed bearing of South 00°27'34" West along the West line of said East Half (1/2) of the Northeast Quarter (1/4) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway G4R; thence Southeasterly 427.63 feet along said centerline on a tangential curve, concave to the Northeast, and having a radius of 1273.38 feet, a central angle of 19°14'34", and a chord 425.62 feet in length bearing South 77°06'19" East; thence South 00°06'52" West 975.79 feet; thence North 88°38'48" West 314.57 feet; thence South 00°54'43" West 358.16 feet; thence South 40°22'12" East 118.00 feet; thence; North 90°00'00" West 1021.99 feet to the West line of the East Half (1/2) of the Northeast Quarter (1/4) of said Section Ten (10); thence North 00°27'34" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the Northeasterly 0.72 acres thereof.

**NOW THEREFORE,** Declarant hereby declares that all properties within the above described real estate shall be held, sold and conveyed subject to the following easements, conditions, covenants and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
Definitions**

Section 1.

**"Association"** shall refer to Hillcrest Owners' Association, Inc., which shall be a non-profit residential real estate management association, its successors and assigns.

Section 2.

**“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, except that a vendee in possession under a recorded contract of sale of any lot shall be considered the owner rather than the contract seller being the owner. Those having an interest merely as security for the performance of an obligation shall not be considered an owner.

Section 3.

**“Properties”** shall mean and refer to that certain real property hereinbefore described and such additional real property which includes lots or plats as may hereafter become subject by covenants of record to assessment by the Association or hereinafter become Common Area.

Section 4.

**“Road Area”** shall mean and refer to the roadway, including the improvements thereon, ownership of which shall be retained by the Owners, subject to easements for the the common use and enjoyment of the owners. The Road Area shall also be all portions of paving, rock roads, sewers and utilities located in the Road

Section 5.

**“Lots”** shall mean and refer to the numbered lots as shown upon any Plats within the Property.

Section 6.

**“Association Responsibility Elements”** shall mean the following, whether located upon a “Lot” or upon the “Common Area”:

- (a) The access roads constructed by the Declarant or the Association and owned by the Association.
- (b) Conduits, ducts, plumbing, wiring, pipes and other facilities located on the above roads which are carrying any service to any “Lot”.
- (c) Street signs owned by the Association, including such signs located on property owned by Madison County, Iowa.

ARTICLE II  
**Property Rights and Maintenance**

Section 1.     **Owners’ Easements and Enjoyment.**

Every Owner shall have a right and easement and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Board of Directors of the Association to dedicate or transfer any part of the Common Area to any public agency, authority or utility for such purposes. No such dedication or transfer by the Board of Directors shall be effective unless an instrument agreeing to such dedication or transfer has been recorded.

**Section 2. Association Responsibility Elements.**

No person, other than the owner of a Lot, and his invitees, shall have the right to enter upon, use or affect an Association Responsibility Element located adjacent to a Lot except that the Association and its designees may enter the Road Area at reasonable times for the following purposes:

- (a) Enforcement of any provision of this Declaration of the Articles of Incorporation or the By-Laws of the Association.
- (b) Mowing and maintenance of grass areas.
- (c) Snow Removal; and
- (d) Maintenance and repair of the road areas.

**Section 3. Maintenance.**

The Association shall be responsible for the maintenance of the Common Area and the improvements thereon, as well as the Association Responsibility Elements as herein defined.

**Section 4. Residences.**

There shall be located on each Lot sold a single-family residence of at least fifteen hundred (1500) square feet living area, not including basement or walk-out basement, and no other use shall be allowed except single-family residency. No structure shall be erected on any Lot except a single-family residential dwelling structure, a one to three car garage, and certain accessory buildings provided that accessory buildings, other than garages, may not be erected in excess of 1000 square feet of area. No construction shall start on any such dwelling until plans have been approved by the Declarant. No mobile homes or double-wide homes shall be erected or placed on any of the lots, plats or Lots included in the real estate described above. No trailer, basement, tent, shack, garage, barn or other accessory building on the Lot shall at anytime be used as a residence, temporarily or permanently; nor, shall any residence of a temporary character be permitted. The titleholder of each lot, tract or Lot shall keep his lot or lots free of weeds and debris and shall not engage in any activity which is a nuisance.

Section 5.

Building setbacks are set forth in Plat of Hillcrest Subdivision.

Section 6.

All wiring shall be underground.

Section 7.

No lot shall be subdivided except that an owner may sell a portion of his lot to an adjacent landowner for the purpose of increasing the size of the adjacent landowners' lot.

ARTICLE III  
**Homeowners' Association, Membership and Voting Rights.**

Section 1.

Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2.

All owners shall be entitled to one vote in the Association for each Lot. When more than one person holds an interest to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine; but, in no event, shall more than one vote be cast with respect to any Lot. Such vote shall be one seventh (1/7) of the total votes.

Section 3. Notwithstanding any other provisions of this Declaration, the Declarant, its successors and assigns, shall be the sole voting membership of the Association until Declarant no longer owns any portion of the property, or until Declarant waives in writing this right to be the sole voting membership, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns, shall have the right to elect all Directors of the Association. Declarant shall waive, in writing, its right to be the sole voting membership when all lots have been sold.

ARTICLE IV  
**Covenants for Maintenance Assessments.**

Section 1. **Creation of Liens and Personal Obligations of Assessments.**

The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed thereof, whether or not it shall be so expressed in such deed, is



deemed to consent and agree to pay to the Association: (1) Annual assessments or charges; and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, together with interest, costs and reasonable attorney's fees, which shall be a charge upon each Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.**

The assessments levied by and for the Association shall be used exclusively to promote the health, safety and welfare of the residents of the property and for the improvement and maintenance of the Common Area and the Association Responsibility Elements.

**Section 3. Annual Assessment.**

- (a) For the period commencing January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be fixed by the Board of Directors of the Association.
- (b) The Board of Directors shall fix the annual assessment each year thereafter.
- (c) A Lot shall not be subject to assessment until the first day of the month following the date of possession of such Lot.
- (d) Lots 1, 2 and 3 shall not be assessed dues for road maintenance.
- (e) No annual assessment shall be made by the Association for the maintenance of the access easement located on the East 40 feet of Lot 2. Provisions for the maintenance for such area are set forth in Article VI.

**Section 4. Special Assessments for Capital Improvements.**

In addition to the annual assessment authorized above, the Association may levy, in any 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 upon the Common Area, which shall include the surfacing or maintenance of any such roads, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4 above.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members entitled to vote not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members entitled to vote or of proxies entitled to vote shall constitute a quorum. At such time as the Declarant no longer controls the Board of Directors of the Association, a quorum shall consist of a majority of the then Lotholders.

**Section 6. Uniform Rate of Assessment.**

Annual assessments, special assessments for capital improvements, and insurance assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.**

Annual assessments 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 30 days in advance of each annual assessment period. Written notice by ordinary mail of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed Certificate of the Association as to the status of an assessment on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Insurance and Insurance Assessments.**

In addition to the annual assessments and special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and for the Association Responsibility Elements. This provision shall not relieve any owner of any Lot from obtaining homeowners' liability insurance and casualty insurance for the property of such owner. In the event of a casualty loss upon the Common Area, the Association shall be responsible for the repair and restoration of the Common Area and the Owner shall be responsible for the repair and restoration of any building or improvements on his Lot.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessments not paid within 30 days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 10. Utilities.**

Each Owner shall be responsible for payment of all utility services to his Lot, including but not limited to, electricity, water, gas, telephone, sewer services, and cable television services.

**Section 11. Assessments for County Related Improvements.**

Notwithstanding any other provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvements or reconstruction of street signs, street lights, fences and sidewalks, if necessary, to comply with any directive of Madison County, Iowa.

**Section 12. Subordination of the Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE V  
Architectural Control**

No alteration of surface drainage be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to the topography by the Board of Directors of the Association. In the event said Board of Directors fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. This Article shall not apply to construction, improvements or alterations made by the Declarant.

**ARTICLE VI  
Easements**

The Lots are burdened with easements for roads, public utilities and other purposes as shown on the Plat. The owner of Lot 3 shall have an easement for ingress and egress over and across the East 40 feet of Lot 2, which shall be jointly used by the owners of Lots 2 and 3 their heirs, successors and assigns. Such owners shall be equally responsible for the up keep, repair, snow removal and all other maintenance for the access area located on the East 40 feet of Lot 2.

**ARTICLE VII  
Use Restrictions.**

**Section 1. Subjection of the Property to Certain Provisions.**

The ownership, use, occupation and enjoyment of each Lot and Road Area shall be subject to

the provisions of the By-Laws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified, shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on or enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2.     **Use of Properties.**

The use of the Properties shall be in accordance with and subject to the following provisions:

- (a) A Lot shall be used or occupied for single family dwelling purposes only.
- (b) A Lot may be rented or leased by the Owner or his lessee provided the entire Lot is rented, and the period of rental is at least one month unless some other period is established in the rules, regulations or By-Laws of the Association. No lease shall relieve the Owner as against the Association and other owners from any responsibility or liability.
- (c) Nothing shall be altered in, constructed in, or removed from the Road Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.
- (d) No livestock or other animals of any kind shall be raised, bred, or kept in any Lot or in any Road Area, except the Owners shall be permitted to keep cats, dogs or other usual household pets and to walk them, upon the Common Area, subject to rules and regulations adopted by the Association.
- (e) No activity shall be allowed which unduly interferes with the peaceful possession and use of the Lots by the Owner nor shall any fire hazard or unsightly accumulation of refuse be allowed. No inoperable motor vehicles shall be permitted on the lots.
- (f) Nothing shall be done or kept in any Lot or in the Road Area which will increase the rate of insurance on the Road Area or the Association Responsibility Elements, without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Road Area which will result in the cancellation of insurance on any Lot or any part of the Road Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.
- (g) All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

(h) The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Road Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licenses.

(i) Agents or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any installation, repair, removal, replacement or inspection of any Association responsibility element, or in connection with landscaping , or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owner as practicable.

(j) An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement of the Road Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employee, agents, or lessee, which liability shall include any increase in insurance rates resulting therefrom.

(k) Neither the Owners nor the Association nor the use of the Road Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Road Area as may facilitate such completion and sale.

(l) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Road Area as they have with respect to public streets and publicly owned parks and areas.

### Section 3.

Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE VIII General Provisions

### Section 1.     **Enforcement.**

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by 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 of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3.     **Amendment.**

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, but no amendment shall alter any rights of the Declarant or impose any additional obligations upon the Declarant without the consent of the Declarant. Any amendment must be recorded. During such time as the Declarant is the sole voting member of the Association, this Declaration may be amended by Declarant.

ARTICLE IX

**By-Laws**

Attached hereto and incorporated herein by this reference are the By-Laws of Hillcrest Owners' Association.

Dated this 22 day of March, 2005.

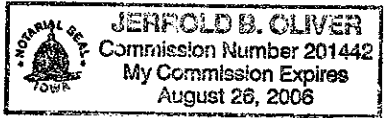
David R. Merriam  
David R. Merriam

Carol G. Merriam  
Carol G. Merriam  
**DECLARANT**

STATE OF IOWA :  
:SS  
COUNTY OF MADISON :

On this 22 day of March, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared David R. Merriam and Carol G. Merriam, to me known to me personally known, who being by me duly sworn, did say that they are the persons named in the within and foregoing instrument, and that the instrument was executed by them as their voluntary act and deed.

Jerfold B. Oliver  
Notary Public in and for the State of Iowa



**BYLAWS  
OF THE  
HILLCREST OWNERS' ASSOCIATION, INC.**

1. **IDENTITY.** These are the Bylaws of Hillcrest Owners' Association, Inc., (the "Association"), a Corporation not for profit under the laws of the State of Iowa. The Association has been organized for the purpose for which the Association is organized is to provide an entity for the construction, reconstruction, maintenance, operation and replacement of roads, waterlines, utilities, and other common improvements and areas of Hillcrest Subdivision, a subdivision located in the East Half (½) of the Northeast Quarter (NE¼) of Section Ten (10), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5<sup>th</sup> P.M., Madison County, Iowa.

2. **MEMBERS' MEETINGS.** (a) The annual members' meeting shall be held at 7:00 P.M., Central Standard Time, on the second Tuesday in February of each year for the purpose of electing directors and transacting any other business authorized to be transacted by the members. If that day is a legal holiday, the meeting shall be held at the same hour on the next day.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-third of the votes of the entire membership.

(c) Notice to all members' meetings, stating the time and place and the objects for which the meeting is called, shall be given by the President or Vice President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than ten days nor more than 30 days prior to the date of the meeting. Notice of meeting may be waived before or after meetings.

(d) The acts approved by a majority of lot holders present at a meeting shall constitute acts of the members.

(e) In any meeting of the members, the owners shall be entitled to cast one vote per lot for each of the lots of Hillcrest Subdivision.

If a lot is owned by one person, his right to vote shall be established by the record title to his lot. If a lot is owned by more than one person, the persons entitled to cast the vote for the lot shall all be members but shall still have just one vote per lot.

(f) Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary.

(g) The order of business at annual members' meetings, and as far as practical at all other members' meetings may be:



- (1) election of chairman of the meeting;
- (2) calling of the roll and certifying of proxies;
- (3) proof of notice of meeting or waiver of notice;
- (4) reading and disposal of any unapproved minutes;
- (5) reports of officers;
- (6) reports of committees;
- (7) election of directors (if necessary);
- (8) unfinished business;
- (9) new business; and
- (10) adjournment.

(h) Until the Developer of the subdivision (the "Developer"), has sold all of the lots, or until the Developer elects to terminate its control, whichever shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

3. **DIRECTORS.** (a) The affairs of the Association shall be managed by a board of not less than two directors. The number may be changed at any annual or special meeting of the members.

(b) Election of directors shall be conducted at that annual members' meeting. A nominating committee of at least two members shall be appointed by the Board of Directors prior to the annual members' meeting. Additional nominations for directorships and directors may be made from the floor. The election shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

(c) Except as to vacancies provided by removal of directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining directors.

(d) Any directors may be removed by concurrence of two-thirds of the votes of the entire membership at a special meeting of the members called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members of the association at the same meeting.

(e) Until the Developer has completed and sold all of the lots, or until the Developer elects to terminate its control, whichever shall first occur, the first directors of the Association shall serve, and in the event of vacancies the remaining directors shall fill the vacancies, and if there are

no remaining directors, the vacancies shall be filled by the Developer.

(f) The term of each director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

4. **DIRECTORS' MEETINGS.** (a) The organizational meeting of the newly-elected Board of Directors shall be held immediately after the annual meeting of the members, and no further notice of the organizational meeting shall be necessary providing a quorum shall be present.

(b) Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone, email or facsimile at least three days prior to the day named for such meeting.

(c) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third of the directors. Notice of the meeting shall be given personally or by mail, telephone, or telegraph at least three days prior to the day named for such meeting, which notice shall state the time, place, and purpose of the meeting.

(d) Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

(e) A majority of the entire board of directors shall constitute a quorum at directors' meetings. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors.

(f) The President, shall be the presiding officer at directors' meetings. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

(g) The order of business at directors' meetings may be:

- (1) calling of roll;
- (2) proof of due notice of meeting;
- (3) reading and disposal of any unapproved minutes;
- (4) reports of officers and committees;
- (5) election of officers;
- (6) unfinished business;
- (7) new business; and

(8) adjournment.

5. **POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the Declaration of Covenants, Conditions and Restrictions for Hillcrest Subdivision, the Articles of Incorporation, and these Bylaws shall be exercised exclusively by the Board of Directors, its agent, contractors, or employees, subject only to approval by lot owners if such is specifically required. Compensation of employees of the Association shall be fixed by the directors. A director may be an employee of the Association, and a contract for management may be entered into with a Director.

6. **OFFICERS.** (a) The executive officers of the Association shall be a President, who shall be a director, a Vice President, who shall be a director, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be removed by vote of the directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary or an Assistant Secretary. The Board of Directors may from time to time elect other officers to exercise such powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Compensation of officers shall be fixed by the Board of Directors.

(b) The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association, in order to assist in the conduct of the affairs of the Association, including, without limitation, the power to appoint such committees as he may deem appropriate from time to time from among the members of the Board.

(c) The Vice President shall in the absence or disability of the President exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(d) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the directors or the President.

(e) The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the books of the Association and shall perform all other duties incident to the office of Treasurer. The Association shall maintain, repair and replace common areas and facilities and common maintenance areas and facilities. Payment vouchers shall be approved by the board and prepared and paid by the Treasurer. The Board may preapprove routine maintenance expenditures that are best paid without waiting for the next Board meeting.

7. **ACCOUNTING.** The funds and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses:

(a) "Current expenses", which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including reasonable allowances for contingencies and working funds, except expenditures chargeable to reserves, to additional improvements, or to operations. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year.

(b) "Reserve for deferred maintenance", which shall include funds for maintenance items which occur less frequently than annually.

(c) "Reserve for replacement", which shall include funds for repair or replacement required because of damage, depreciation, or obsolescence.

(d) "Additional improvements", which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which will be part of the common elements.

8. **BUDGET.** The Board of Directors shall adopt a budget for each calendar year which shall include the estimated funds required to defray common expenses and to provide funds for the accounts listed in Section 7 of these Bylaws. The budget shall take into account the following items:

(a) Current expenses;

(b) Reserve for deferred maintenance;

(c) Reserve for replacement;

(d) Additional improvements;

(e) Operations, the amount of which may be to provide a working funds or to meeting losses.

Until the Developer has completed and sold all of the lots of the Hillcrest Subdivision, or until the Developer elects to terminate its control of Hillcrest Owners' Association, Inc., whichever shall first occur, the Board of Directors may omit from the budget all allowances for contingencies and reserves.

9. **PARLIAMENTARY RULES.** Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration, the Articles of Incorporation, or these Bylaws.

10. **AMENDMENTS.** These Bylaws may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is

considered.

(b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meetings considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be at least 75% of the entire membership or of the Board of Directors.

(c) A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Public Records of Madison County, Iowa.

The foregoing were adopted as the Bylaws of Hillcrest Owners' Association, Inc., a corporation not for profit under the laws of the State of Iowa, at the first meeting of the Board of Directors on March 22, 2005.

Carol G. Merriam  
Secretary

APPROVED:

David B. Merriam  
President

**IRREVOCABLE STANDBY LETTER OF CREDIT**

ISSUER: UNION STATE BANK  
P.O. BOX 110  
201 WEST COURT  
WINTERSET, IA 50273

Date of Issue: <u>04-15-2005</u> Letter of Credit Number: <u>6000025050</u>	
Amount: U.S. \$ <u>25,095.00</u> ( <u>TWENTY FIVE THOUSAND NINETY FIVE AND NO/100</u> U.S. DOLLARS)	
For Benefit Of: <b>Beneficiary Name and Address</b>	For Account Of: <b>Applicant Name and Address</b>
MADISON COUNTY TREASURER %COURTHOUSE, WINTERSET, IOWA 50273	DAVID R. MERRIAM CAROL G. MERRIAM 2592 CUMMING RD WINTERSET, IA 50273-8166

LETTER OF CREDIT. Issuer establishes this Irrevocable Standby Letter of Credit (Letter of Credit) in favor of Beneficiary in the amount indicated above. Beneficiary may draw on this Letter of Credit with a Draft (or Drafts, if the maximum number of drawings is greater than one) together with the documents described below. Each Draft shall be signed on behalf of Beneficiary and be marked "Drawn under [Issuer name] Letter of Credit No. [Letter of Credit number] dated [Letter of Credit date]." Drafts must be presented at Issuer's address shown above on or before the Expiration Date. The presentation of any Draft shall reduce the Amount available under this Letter of Credit by the amount of the Draft.

This Letter of Credit sets forth in full the terms of Issuer's obligation to Beneficiary. This obligation cannot be modified by any reference in this Letter of Credit, or any document to which this Letter of Credit may be related.

This Letter of Credit expires on the Expiration Date.

**DRAWINGS.**

- Partial drawings shall not be permitted under this Letter of Credit.
- Partial drawings are permitted. The maximum number of drawings that may be made is \_\_\_\_\_.

**DOCUMENTS.** Each Draft must be accompanied by the following, in original and two copies except as stated:

- The original Letter of Credit, together with any amendments.
- A sight draft drawn by Beneficiary on Issuer.
- A signed statement by Beneficiary including the following statement: **INVOICE FOR ROAD BUILDING AFTER COMPLETION IF THE COUNTY BUILDS THE ROADWAY**
- Other documents:

Issuer shall be entitled to accept a draft and the documentation described above, as required by the terms of this Letter of Credit, from any person purporting to be an authorized officer or representative of Beneficiary without any obligation or duty on the part of Issuer to verify the identify or authority of the person presenting the draft and such documentation.

**SPECIAL INSTRUCTIONS: THIS LETTER OF CREDIT SHALL BE NULL AND VOID ONCE THE MERRIAM'S HAVE COMPLETED THE ROADWAY WITHIN THE ONE YEAR TIME PERIOD SPECIFIED BY MADISON COUNTY ZONING.**

**EXPIRATION DATE.** This Letter of Credit expires at the close of business at Issuer's address at 12:00 AM (Time) on 04-15-2006 (Date). Issuer agrees to honor all Drafts presented in strict compliance with the provisions of this Letter of Credit on or before the Expiration Date.

- If Beneficiary has not drawn the full amount of this Letter of Credit prior to the Expiration Date, the Expiration Date shall be extended for a period of \_\_\_\_\_ days from the Expiration Date, unless Issuer notifies Beneficiary in writing at least \_\_\_\_\_ days prior to the Expiration Date that Issuer elects not to extend this Letter of Credit. In any event, this Letter of Credit shall expire on \_\_\_\_\_ without any notice from Issuer to Beneficiary.

TRANSFERABILITY. This Letter of Credit is  transferable  non-transferable.

APPLICABLE LAW. This Letter of Credit shall be governed by:

- the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (UCP), or any later version or amendment.
- the International Standby Practices 1998 (ISP98).

This Letter of Credit shall also be governed by the laws of IOWA, the United States of America, so long as such laws are not inconsistent with the UCP or ISP, as applicable.

UNION STATE BANK

(Issuer Name)

By   
(Signature)

4-15-05  
(Date)

DUANE GORDON, VICE PRESIDENT

(Signer Name and Title)

## **NPDES GENERAL PERMIT No. 2 PLANS & SPECIFICATIONS:**

SITE DESCRIPTION: HILL CREST SUBDIVISION, A SUBDIVISION LOCATED IN THE EAST HALF, NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 76 NORTH, RANGE 27 WEST OF THE 5<sup>th</sup> P.M., LOCATED IN & FORMING A PART OF, MADISON COUNTY, IOWA.

Owner's Representative:

DAVID MERRIAM  
2592 CUMMING RD.  
WINTERSET, IOWA 50273

Engineer:

Vance & Hochstetler, PC  
Consulting Engineers  
110 West Green Street  
Winterset, IA, 50273

This site discharges into an unnamed tributary of North Elm Creek which is a tributary of Cedar Creek. The site consists of 40 acres and is split into seven individual single – family lots one of which has an existing house on it. The area being disturbed slopes to the South to an unnamed creek across the Southerly part of the parcel which flows to the Southeast from the Southeast Corner of the property. We estimate that approximately 4.7 acres of the upland portion of the property will be disturbed by road construction, utility installation and the construction of six residential homes.

**DRAINAGE CALCULATIONS:** The calculations for existing and proposed stormwater runoff from this site are shown on separate calculations.

**LAND DISTURBANCE:** Prior to initiating a land disturbing activity a person engaged in the land disturbing activity shall file a signed affidavit with the soil & water conservation district that the project will not exceed the soil loss limits. “**Land disturbance**” (for purposes under 161A.64 of the Iowa Code) means a land change such as tilling, clearing, grading, excavating, transporting, or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state or onto lands in the state, but does not include tilling, planting, harvesting, gardening, landscaping, installing posts or poles, or emergency work to protect life or property.

**STABILIZATION:** Under Iowa's General Permit No. 2, disturbed areas of the construction site that will not be redisturbed for 21 days or more must initiate stabilization measures by the 14<sup>th</sup> day after the last disturbance, except as precluded by snow cover. In the event of snow cover, stabilization measures must be initiated as soon as practicable thereafter.

Temporary seeding and mulching shall achieve stabilization of initial operations on this site, with permanent seeding in the street rights-of-way after all construction activities are completed. Permanent seeding and sod stabilization shall be used for individual house sites, with all construction crews involved in house construction



activities operating under the authority of the Owner's Representative with regards to erosion control.

**Iowa's General Permit No. 2 requires that the pollution prevention plan include structural practices to divert flows away from disturbed areas, to store flows, or to limit the discharge of pollutants from the site to the degree attainable.**

All areas not directed into a culvert shall have silt fences installed to limit sediment runoff. Slopes within the drainage area of said culverts will also have silt fences installed to limit silt & organic material clogging the culvert during construction activities. All culverts shall discharge into stormwater detention basins, which shall also function as sediment basins. All stormwater detention/sediment basins shall be inspected weekly during construction activities, and said basins shall be cleaned when the accumulation of silt compromises the effectiveness of the basin.

**Proper disposal of construction site waste materials: Iowa's solid waste regulations require that construction/demolition waste be taken to a permitted sanitary landfill. No liquids or hazardous waste will be accepted.**

We do not anticipate requiring any construction wastes to be landfilled. If a situation arises where material is not suitable for landscaping fill or for use as rip-rap for the edge of the detention basins, said material shall be disposed of properly, under the supervision of the Owner's Representative.

**Prevent off-site tracking of sediments & generation of dust.**

All construction entrances for this site shall be stabilized as soon as possible after the commencement of construction activities. If dust becomes a problem, control measures shall be implemented.

**STORM WATER MANAGEMENT CONTROLS (post-stabilization):**

After the site has been stabilized, storm water shall be managed with the detention basins shown on the site plan. These basins shall be inspected periodically after stabilization to ensure that silt, organic material & trash do not compromise the effectiveness of the basin. Removal of said items shall be the responsibility of the Owner's Representative. If any areas show susceptibility to erosion after stabilization, infiltration measures such as infiltration trenches or basins shall be installed by the Owner's Representative. Said infiltration measures shall either have a surface discharge point which is protected from erosion.

**LOCATION OF CONTROLS: See attached plan.**

## **INSPECTION & MAINTENANCE PLAN:**

The following items shall be included in a checklist for weekly inspection by the Owner's Representative. Said inspections shall also occur within 24 hours after a rainfall event equal to or exceeding 0.5 inches.

1. Condition of perimeter silt fences. Ensure that all fences are upright & are not clogged with silt, organic material or trash.
2. Condition of detention basins. Ensure that all basins are operating properly, and remove any silt, organic material or trash that is interfering with said operation. Also check the basin outlets to ensure that all discharge points are protected from erosion by rip-rap or vegetated strips. If erosion at any discharge point is noted, additional measures should be taken within 7 days to prevent further erosion.
3. Condition of culvert. Ensure that erosion is not occurring at all culvert intakes, and use silt fences, rip-rap, or mulch to correct any problems. Also ensure that the culvert is not clogged with silt, organic materials or trash. If clogging becomes a problem, the Owner's Representative is responsible for cleaning the culvert.
4. Condition of individual house site silt fences. Same as Item #1, with additional scrutiny of any ingress/egress points for construction activity on each site. Each of these points shall be protected with rock or surface treatment to minimize tracking onto the road.
5. Condition of all construction entrances to the site. Ensure that sediment is not being tracked onto off-site roads, and that dust is not a problem in these areas. If dust becomes a problem, ingress/egress and staging areas may require surface treatment (such as rock) to control the problem.
6. Condition of any additional erosion control measures installed during the project. Ensure that these structures are functioning properly, and clean out any accumulated silt, organic material or trash as required.
7. Condition of all stockpile and contractor staging areas. Ensure that all areas are protected from erosion & have no potential hazardous conditions (leaking fuel or chemical tanks, as an example).

The inspector shall prepare an inspection report of the aforementioned structures. This report shall summarize the scope of the inspection; provide the name(s) & qualifications of personnel making the inspection; include the date(s) of the inspection; identify any damages or deficiencies in the control measures; identify what actions will be taken to modify pollution control practices. These reports document the inspection process, and maintenance of these reports shall be the responsibility of the Owner's Representative. All inspection reports must contain the following certification statement, and be signed in accordance with the signatory requirements found in the general permit.

### **INSPECTION REPORT CERTIFICATION STATEMENT:**

**“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate & complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”**

Inspection reports shall be used to record scheduled maintenance. Any changes required to correct deficiencies in the Storm Water Pollution Prevention Plan noted during an inspection shall be made as soon as practical after an inspection, but in no case later than 7 days after said inspection.

In addition to inspection & maintenance reports, the Owner's Representative shall keep records of construction activities on the site. Items of particular importance include the dates when major grading activities occur in a particular area, the dates when said activities cease either temporarily or permanently, and the dates when an area is stabilized either temporarily or permanently. All these records shall be retained for a period of at least three years from the date that the site is finally stabilized.

### **SEQUENCE OF MAJOR ACTIVITIES:**

1. INSTALL PERIMETER CONTROLS (SILT FENCES).
2. INSTALL UTILITIES
3. STABILIZE ALL UTILITIES LYING OUTSIDE OF ROAD SURFACES.
4. SURFACE ROAD
5. INSTALL STORMWATER DETENTION/SILT BASINS.
6. STABILIZE ROAD RIGHTS-OF-WAY AND OTHER AREAS DISTURBED DURING CONSTRUCTION.
7. INSTALL SILT FENCES FOR INDIVIDUAL HOUSES (AS NEEDED)
8. CONSTRUCT INDIVIDUAL HOUSES.
9. STABILIZE ALL AREAS DISTURBED ON INDIVIDUAL LOTS (AS NEEDED).
10. CLEAN ALL STORMWATER DETENTION/SILT BASINS TO REMOVE WASTE MATERIAL FROM INDIVIDUAL HOUSE CONSTRUCTION ACTIVITIES.
11. REMOVE TEMPORARY PERMITER CONTROLS AFTER STABILIZATION IS ACHIEVED.

## **UPDATES OR CHANGES TO THE PLAN:**

The Stormwater Pollution Prevention Plan shall be updated if any of the following situations are applicable:

1. Owner's representative observes that the existing plan is not effective in minimizing pollutant discharge from the site.
2. Any contractors working on site after submittal of the Notice of Intent shall certify the plan & be identified as co-permittees.
3. Any changes in ownership or transference of the permit & permit responsibilities.

Any changes to the plan required by the Iowa DNR to correct deficiencies & meet one or more of the minimum standards in the General Permit shall be accomplished by the Owner's Representative within 7 days of notification by the IDNR.

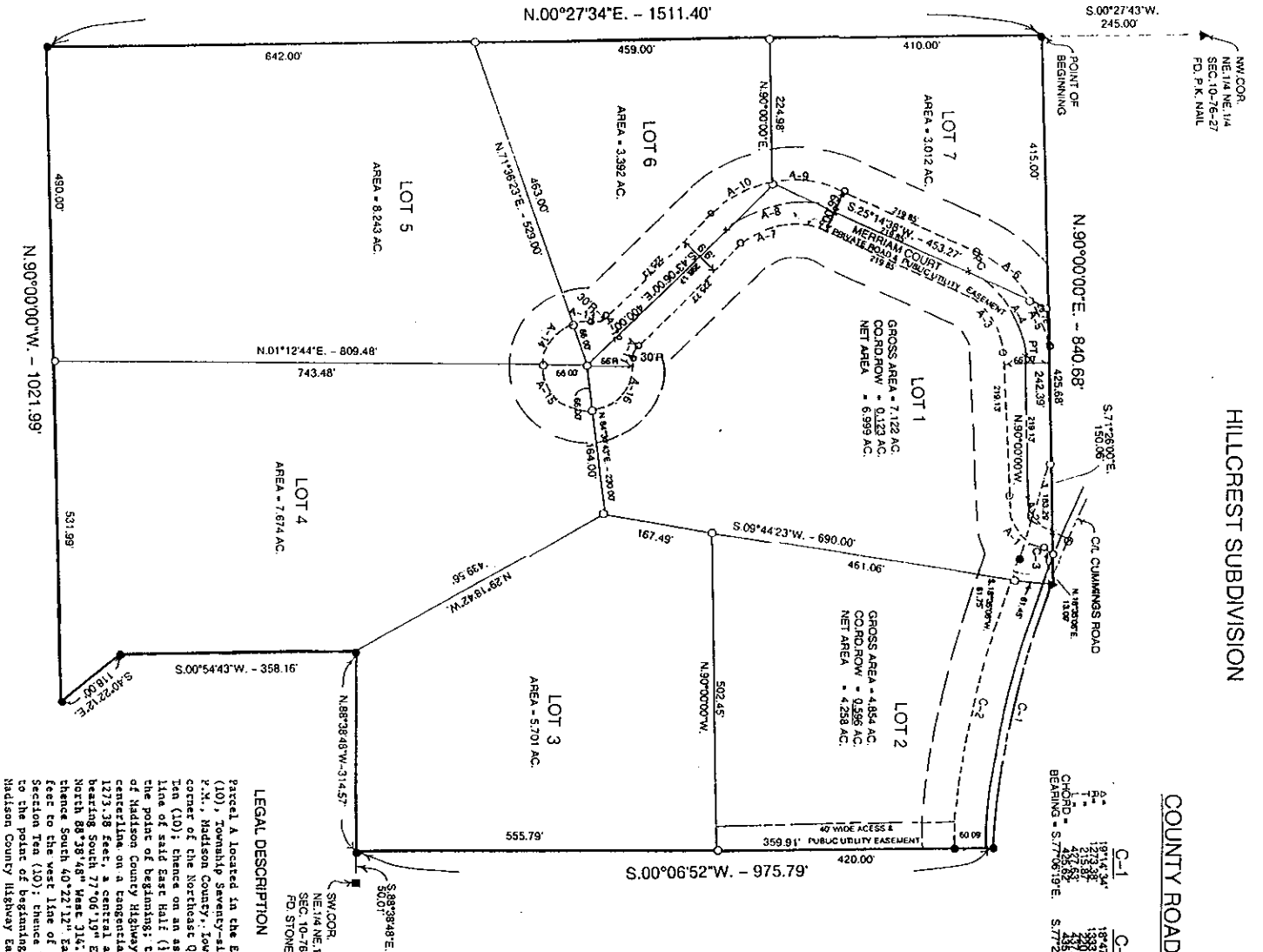
**HAZARDOUS CONDITIONS:** Iowa law requires that as soon as possible, but not more than six hours after the onset of a hazardous condition, the IDNR and local sheriff's office or the office of sheriff of the affected county be notified. "Hazardous conditions" are defined as any situation involving the actual, imminent, or probably spillage, leakage or release of a hazardous substance on to the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. (Hazardous substances are defined in 455B.381(1) of the 1991 Code of Iowa.) The storm water pollution prevention plan must be modified within 14 calendar days of a hazardous condition. The plan shall describe the release & the circumstances leading to the release, and steps to prevent a reoccurrence of such releases shall be identified in the plan & implemented by the Owner's representative.

## **PLAN LOCATION & ACCESS:**

A copy of the Pollution Prevention Plan must be kept at the construction site from commencement of construction activities until the site has reached final stabilization. Plans & associated records must be made available upon request to the Department of Natural Resources.

MICHELLE "MICKI" UTSLER, COUNTY RECORDER  
MADISON IOWA

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



HILLCREST SUBDIVISION

COUNTY ROAD CURVE DATA

Curve	Stationing	Radius	Chord	Bearing
C-1	1874.34'	1213.38'	215.28'	121.58°
C-2	1847.89'	1333.36'	220.73'	123.52°
C-3	1758.96'	1291.28'	233.50'	125.50°
	1539.36'	1333.36'	220.73'	123.52°
	1539.36'	1291.28'	233.50'	125.50°
	1539.36'	1213.38'	215.28'	121.58°

- CURVED POINT (CIP) 8800 TO BE SET
- CURVED POINT
- FOUND STONE
- ▲ COUNTY ROAD & PRIVATE ROAD ROW LINES
- BUILDING SETBACK LINE AND SETBACK-50'
- SLOPE LAND SETBACK-25'
- CALCULATED POINT NOTHING SET
- SANITARY SEWER-INDIVIDUAL ON-SITE SYS
- WATER-WARNER RURAL WATER
- POWER COVERED AERIAL WATER
- CUMMING ROAD ON A COMMON DRIVEWAY, ALL OTHER LOTS TO ACCESS PRIVATE ROAD

PRIVATE ROAD CURVE DATA

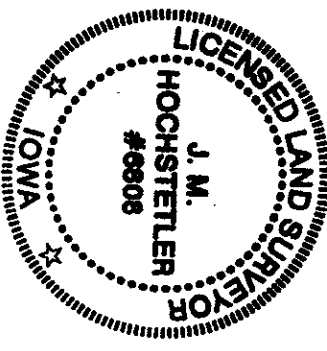
Curve	Stationing	Radius	Chord	Bearing
A-3	649.52'	2830.59'	325.63'	68°20'38"
A-4	649.52'	183.00'	117.00'	150.00'
A-5	117.00'	183.00'	117.00'	150.00'
A-6	132.23'	169.53'	75.11'	111.62'
A-7	125.31'	160.65'	74.58'	109.90'
A-8	125.31'	160.65'	74.58'	109.90'
A-9	5.79°37'19"W, S.57°37'19"W, S.71°57'02"W, S.42°43'05"W, S.08°55'41"E, S.08°55'42"E			
A-10	48°59'08"	2616'43"	702'33'39"	66.00'
A-11	48°59'08"	30.00'	66.00'	66.00'
A-12	25.65'	25.65'	81.08'	111.39'
A-13	24.88'	24.88'	76.08'	98.63'
A-14	67°39'24"E, S.18°36'27"E, S.06°15'15"E, S.53°35'27"E, N.42°51'44"E, N.48°47'13"W			

LEGAL DESCRIPTION

Parcel A located in the East Half (1) of the Northeast Quarter (1) of Section Ten (10), Township Seven-Six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa, described as follows: Commencing at the Northeast corner of the Northeast Quarter (1) of the Northeast Quarter (1) of said Section Ten (10); thence on an assumed bearing of South 00°27'54" West along the West line of said East Half (1) of the Northeast Quarter (1) a distance of 245.00 feet to the point of beginning; thence North 90°00'00" East 840.68 feet to the centerline of Madison County Highway 648; thence-southwesterly, 427.63 feet along said centerline on a tangential curve; thence-southwesterly, 427.63 feet in length bearing South 77°06'19" East; thence South 00°06'59" West 425.62 feet in length bearing South 40°22'12" East; thence North 00°54'43" West 358.16 feet; thence South 88°38'48" West 314.57 feet; thence North 00°54'43" West 1021.99 feet to the West line of the East Half (1) of the Northeast Quarter (1) of said Section Ten (10); thence North 00°27'54" East along said West line 1511.40 feet to the point of beginning. Said tract contains 40.00 acres and is subject to a Madison County Highway Easement over the northeasterly 0.72 acres thereof.

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 5/11/05  
My license renewal date is December 31, 2014  
Pages or sheets covered by this seal: 1



APRIL 20, 2005  
FINAL PLAT

HILLCREST SUBDIVISION

OWNER/DEVELOPER:  
DAVID & CAROL MERRIAM  
2592 CUMMING ROAD  
WINTERSSET, IOWA 50273

ENGINEER/LAND SURVEYOR  
VANCE & HOCHSTETLER, P.C.  
CONSULTING ENGINEERS  
110 WEST GREEN STREET  
WINTERSSET, IOWA 50273