

FOR PLAT SEE  
2006-3947

DEDICATION OF PLAT  
OF  
MCLAUGHLIN SUBDIVISION, PLAT 2  
TO THE CITY OF EARLHAM, MADISON COUNTY, IOWA

COMPUTER	<input checked="" type="checkbox"/>
RECORDED	<input checked="" type="checkbox"/>
COPIED	<input type="checkbox"/>

KNOW ALL MEN BY THESE PRESENT:

First Equity Builders, LLC, does hereby certify that it is the sole owner and proprietor of the following-described real estate:

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

Commencing at the East Quarter Corner of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa; Thence North 90°00'00" West 622.19 feet along the North line of the Southeast Quarter of said Section 6; thence South 00°12'37" West 321.93 feet to the Southeast Corner of Cook's Addition to the City of Earlham, Iowa; thence South 89°54'41" West 200.00 feet to the Point of Beginning which is the Northwest Corner of Lot 4 of McLaughlin Subdivision, Plat 1, City of Earlham; Thence South 00°10'56" East 221.41 feet along the West line of said Lot 4 projected to the Southwest Corner of Outlot "B" which was dedicated Street right-of-way for Mc Laughlin Subdivision Plat 1; thence South 69°42'26" East 21.15 feet along a line of said Outlot "B"; thence along a line of said Outlot "B" Southeasterly 21.93 feet along a 230.00 foot radius curve concave Northerly with a 43.67 foot chord bearing South 75°09'12" East; thence South 00°11'10" East 82.09 feet along the West line of Lot 3 of Mc Laughlin Subdivision Plat 1 to a point on the South line of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence South 89°49'20" West 478.25 feet along said South line to the Northeast Corner of Parcel "F" in the Northeast Quarter of the Southeast Quarter of said Section 6; thence South 00°10'56" East 8.48 feet; thence South 89°49'20" West 82.00 feet to the Northeast Corner of Lot 32 of Clearview Estates, Plat 2, City of Earlham, Iowa; thence North 00°10'56" West 331.43 feet along the East line of Clearview Estates, Plat 2 and Clearview Third Addition to the Northwest Corner of the South Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence North 89°54'20" East 498.25 feet along the North line of said South Half to the Point of Beginning containing 3.834 acres.

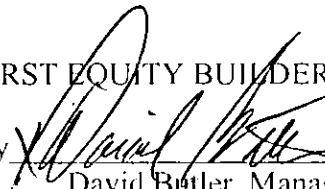
Parcel to be dedicated as McLaughlin Subdivision, Plat 2, City of Earlham, Iowa contains 12 residential building lots numbered 5 through 17; Lot A and Parcel "F" to be dedicated as N.E. 4<sup>th</sup> Street right-of-way; and Outlot "A" which will be added to Lot 33 of Clearview Estates, Plat No. 2.

That the subdivision of the above-described real estate, as shown by the final plat of McLaughlin Subdivision, Plat 2, to the City of Earlham, Madison County, Iowa, is with the free consent and in accordance with the owner's desires as owners of said real estate.

Dated this 25 day of September, 2006.

FIRST EQUITY BUILDERS, LLC

By



David Butler, Manager

STATE OF IOWA, COUNTY OF MADISON

This instrument was acknowledged before me on this 25 day of September, 2006, by David Butler, Manager, of First Equity Builders, LLC.

Michele Sible  
Notary Public in and for said State of Iowa



**RESOLUTION APPROVING FINAL PLAT  
OF  
MCLAUGHLIN SUBDIVISION, PLAT 2  
AN ADDITION TO THE CITY OF EARLHAM,  
MADISON COUNTY, IOWA**

WHEREAS, there was filed in the office of the City of Earlham, Iowa a registered and surveyor's plat of a proposed subdivision known as McLaughlin Subdivision, Plat 2, an Addition to the City of Earlham, Madison County, Iowa.

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

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

Commencing at the East Quarter Corner of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa; Thence North 90°00'00" West 622.19 feet along the North line of the Southeast Quarter of said Section 6; thence South 00°12'37" West 321.93 feet to the Southeast Corner of Cook's Addition to the City of Earlham, Iowa; thence South 89°54'41" West 200.00 feet to the Point of Beginning which is the Northwest Corner of Lot 4 of McLaughlin Subdivision, Plat 1, City of Earlham; Thence South 00°10'56" East 221.41 feet along the West line of said Lot 4 projected to the Southwest Corner of Outlot "B" which was dedicated Street right-of-way for Mc Laughlin Subdivision Plat 1; thence South 69°42'26" East 21.15 feet along a line of said Outlot "B"; thence along a line of said Outlot "B" Southeasterly 21.93 feet along a 230.00 foot radius curve concave Northerly with a 43.67 foot chord bearing South 75°09'12" East; thence South 00°11'10" East 82.09 feet along the West line of Lot 3 of Mc Laughlin Subdivision Plat 1 to a point on the South line of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence South 89°49'20" West 478.25 feet along said South line to the Northeast Corner of Parcel "F" in the Northeast Quarter of the Southeast Quarter of said Section 6; thence South 00°10'56" East 8.48 feet; thence South 89°49'20" West 82.00 feet to the Northeast Corner of Lot 32 of Clearview Estates, Plat 2, City of Earlham, Iowa; thence North 00°10'56" West 331.43 feet along the East line of Clearview Estates, Plat 2 and Clearview Third Addition to the Northwest Corner of the South Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence North 89°54'20" East 498.25 feet along the North line of said South Half to the Point of Beginning containing 3.834 acres.

Parcel to be dedicated as McLaughlin Subdivision, Plat 2, City of Earlham, Iowa contains 12 residential building lots numbered 5 through 17; Lot A and Parcel "F" to be dedicated as N.E. 4<sup>th</sup> Street right-of-way; and Outlot "A" which will be added to Lot 33 of Clearview Estates, Plat No. 2.

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 proprietor, First Equity Builders, LLC.

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 liens and encumbrances, and a certified statement from the Treasurer of Madison County, Iowa, that said platted land is free from taxes.

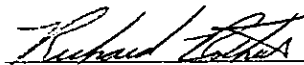
WHEREAS, all improvements and installations in the subdivision, as required by the Subdivision Ordinance of the City of Earlham, Iowa, have been made or installed in accordance with City specifications.

WHEREAS, the City Council of the City of Earlham, Iowa, finds that said Plat conforms to the provisions of the Subdivision Ordinance of the City of Earlham and that the plat, papers and documents presented therewith should be approved.

NOW THEREFORE:

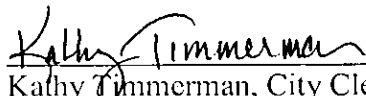
That said plat, known as McLaughlin Subdivision, Plat 2, an Addition to the City of Earlham, Madison County, Iowa, and all documents and papers prepared in connection with said plat and subdivision, are hereby approved.

Dated at Earlham, Iowa, this 25<sup>th</sup> day of September, 2006.



Richard Rothert, Mayor

Attest:



Kathy Timmerman, City Clerk

**ATTORNEY'S OPINION FOR FINAL PLAT,  
MCLAUGHLIN SUBDIVISION, PLAT 2**

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 September 4, 2006, at 8:00 a.m., by Madison County Abstract Co., purporting to show the chain of title to the following described real estate, which is the real property contained in Final Plat, McLaughlin Subdivision, Plat 2, Madison County, Iowa:

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

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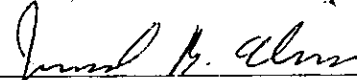
In my opinion, merchantable title to the above described property is in the name of First Equity Builders, L.L.C., free and clear of all liens and encumbrances.

Entry No. 86 shows a Gas Easement to MidAmerican Energy Company, its successors or assigns dated July 14, 1999, and filed July 30, 2006, in Town Lot Deed Record 63, Page 295 of the Recorder's Office of Madison County, Iowa, granting a

perpetual right of way easement for the purpose of constructing, reconstructing, operating, maintaining and removing a pipeline for the transportation of gas, oil, petroleum and other substances and any necessary appurtenances over and across a strip of land ten (10) feet in width.

Respectfully submitted,

JORDAN, OLIVER & WALTERS, P.C.

By 

Jerrold B. Oliver

Farmers & Merchants Bank Bldg.

P.O. Box 230

Winterset, Iowa 50273

Telephone: (515) 462-3731

ATTORNEYS FOR

FIRST EQUITY BUILDERS, L.L.C.

# CERTIFICATE OF THE COUNTY TREASURER OF MADISON COUNTY, IOWA

---

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:

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

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DATED this 25 day of September, 2006.

G. JoAnn Collins  
G. JoAnn Collins, Treasurer of Madison County, Iowa





DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR MCLAUGHLIN SUBDIVISION, PLAT 2

THIS DECLARATION, is made on the date set forth below, by First Equity Builders, LLC, hereinafter referred to as the "Declarant".

WITNESSETH :

WHEREAS, Declarant is the owner of certain property in Earlham, County of Madison, State of Iowa, which is more particularly described as:

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

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NOW, THEREFORE, Declarant hereby declares that all of the properties above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, 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, all pursuant to Iowa Code Chapter 499B.

ARTICLE I. DEFINITIONS.

Section 1.

"Association" shall mean and refer to Townhomes on Fourth Homeowners Association, Inc., 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 numbered lot which is a part of the Properties, except that a vendee in possession under a recorded contract of sale of any numbered lot shall be considered the owner instead of the contract seller. 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 as may hereafter become subject by covenants of record to assessment by the Association or hereafter become Common Areas.

Section 4.

"Common Areas" shall mean the Common Areas designated on the final plat of McLaughlin Subdivision, Plat 2 (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners.

The Common Areas shall also be all portions of paving, sewers and utilities located in the Common Areas and not included within property owned by a municipality or municipal agency. The Common Areas and any improvements thereon, if any, shall be conveyed to the Association.

Section 5.

"Lot" shall mean and refer to the numbered Lots as shown upon any recorded subdivision plat within the Properties.

Section 6.

"Association Responsibility Elements" shall mean the following, whether located upon a Parcel or upon the Common Areas:

(a) The yard, trees and shrubbery surrounding the residential structure upon a Lot, the yard, trees and shrubbery on any Common Areas, and the sidewalks.

(b) Driveways.

(c) The fences constructed by the Declarant or Association and owned by the Association.

(d) Conduits, ducts, plumbing, wiring, pipes and other facilities within the lot but outside a residential structure which are carrying any service to more than one Numbered lot.

(e) Street signs owned by the Association, including such signs located on property owned by the City of Earlham.

**ARTICLE II. PROPERTY RIGHTS AND MAINTENANCE**

Section 1. Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Numbered lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by a majority of the members entitled to vote, has been recorded.

Section 2. Delegation of Use.

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family or their tenants.

Section 3. Association Responsibility Elements.

No person other than the Owner of a numbered lot and his invites shall have the right to enter upon, use or affect an Association Responsibility Element located within a numbered lot, except that the Association and its designates may enter upon and within a numbered lot and the residential structure located thereon at reasonable times for the following purposes :

- (a) Installation, repair, maintenance, removal, replacement or inspection of an Association Responsibility Element.
- (b) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association.
- (c) Mowing and maintenance of grass areas.
- (d) Snow removal.

Section 4. Maintenance.

The Association shall be responsible for maintenance of the Common Areas and improvements thereon. Each owner shall be responsible for maintenance of his Numbered lot and all structures, improvements and equipment thereon, except for the Association Responsibility Elements.

- (a) Landscaping. Landscaping shall be installed on Lots 5 through 17. All landscaping areas shall be maintained by the Association. No landscaping elements shall be removed unless diseased or substantially damaged by wind, lightning or other natural forces. All diseased or substantially damaged landscaping elements, plantings or materials shall be promptly replaced with reasonably comparable items, unless the Association decides to change the landscaping. All lawn areas and all shrubs and trees located thereon, which are installed by the Declarant, its successors and assigns, shall be maintained, mowed and trimmed on a regular basis. The Association shall have the power to change landscaping elements from what is originally installed. The Association shall have exclusive control over landscaping in front yards, and over

trees and shrubs in back yards. Owners may plant gardens in back yards.

(b) Maintenance of Improvements. All fences, walls and other improvements owned by the Association shall be maintained, repaired and replaced by the Association. Any lighting installed by Declarant, its successors and assigns, shall be maintained in good operating order by the Association.

(c) No Nuisance. The Association shall not allow any of the improvements or any fences owned by the Association to become a nuisance through lack of repair, maintenance or replacement.

#### Section 5. Townhouses

Each townhouse shall be one story, with a full basement, predominantly frame construction, and aluminum siding. Marked Exhibit A, attached hereto, and incorporated herein by this reference, is a copy of the Floor Plan for a typical townhouse, which shall be reversed for the other side of the townhouse. All townhouse units shall be joined such that there are two townhouses together, with a common wall. Each townhouse shall be on a separate numbered lot. Each townhouse shall have a house number, assigned as a street number by the City of Earlham. There are no limited common elements and facilities on this property. If two townhouses, with a common wall, are damaged or destroyed, in whole or part, the owners of both townhouses must mutually agree on whether or not to rebuild, repair or restore them.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

#### Section 1.

Every Owner of a numbered 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 numbered lot which is subject to assessment.

#### Section 2.

All Owners shall be entitled to one vote in the Association for each numbered lot. When more than one person holds an interest in any numbered lot, all such persons shall be members. This vote for such numbered lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any numbered lot.

#### Section 3.

Notwithstanding any other provision of this Declaration, the Declarant, its successors and assigns, shall be the sole voting member of the Association until Declarant no longer owns any portion of the Properties, or until Declarant waives, in writing, this right to be the sole voting member, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns, shall have the right to elect all directors.

### ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each numbered lot owned within the Properties, hereby covenants, and each Owner of any numbered lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant 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, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The assessments levied by and for the Townhomes on Fourth Homeowners Association, Inc. shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and Association Responsibility Elements.

Section 3. Annual Townshomes on Fourth Homeowners Association Assessment.

(a) For the period commencing January 1 of the year immediately following the conveyance of the first numbered lot to an Owner, the annual assessment shall be fixed by the Board of Directors of Townhomes on Fourth Homeowners Association, Inc.

(b) The Board of Directors shall fix the annual assessment each year thereafter.

(c) A numbered lots shall not be subject to assessment until the first day of the month following the date of occupancy thereof as a residence.

(d) The Declarant shall not be liable for annual or special assessments upon numbered lots owned by the Declarant unless the unit is occupied as a residence, or has had a certificate of occupancy issued concerning such unit by the City of Earlham.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments 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 Areas, or for any Association Responsibility Element, including fixtures and personal property related thereto, 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.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members entitled to vote not less than 10 days nor more than 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 cast the votes shall constitute a quorum.

Section 6. Uniform Rate of Assessment.

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

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

The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each numbered lot at least thirty (30) days in advance of each annual assessment period. Written notice 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 specified numbered lot have been paid. A properly executed certificate of the Association as to the status of assessments on a numbered lot is binding upon the Association as of the date of its issuance.

Section 8. Insurance and Insurance Assessment.

In addition to the annual assessments and the 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 Areas and for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Areas and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Numbered lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions.

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

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his townhouse.

Section 10. 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 numbered lot shall not affect the assessment lien. However, the sale or transfer of any numbered lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such numbered lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Utilities.

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

Section 12. Assessments for City Related Improvements.

Notwithstanding any of the provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvement, or reconstruction of street signs, fences, and sidewalks as necessary to comply with any directive of the City of Earlham, Iowa.

**ARTICLE V. ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including painting or color change) be made, nor shall any alteration of surface drainage patterns be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. The owners shall be permitted to construct small, permanent garden sheds in conformity with this article. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification 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

Each numbered lot shall be subject to the following easements in favor of the Association.

- (a) Every portion of a structure upon a numbered lot which contributes to the support of any structure not on the same numbered lot is burdened with an easement of such support.
- (b) Each numbered lot is burdened with an easement through it for conduits, ducts, plumbing, wiring, pipes, meters and other facilities for the furnishing of utilities and services, foundation drains, sanitary sewer and water service facilities.
- (c) Each numbered lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association.
- (d) Each numbered lot is burdened with an easement for common driveway usage with others.
- (e) Each numbered lot is burdened with an easement for surface drainage for the benefit of all other lots and the Common Areas.
- (f) Each numbered lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (g) Each numbered lot is burdened with easements for public utilities and sidewalks.
- (h) Each numbered lot is burdened with easements for a fence constructed by the Declarant or, the Association and maintained by the Association.
- (i) Each numbered lot is burdened with public utility easements as shown on the Subdivision Plat.

## ARTICLE VII. USE RESTRICTIONS.

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

The ownership, use, occupation and enjoyment of each numbered lot and the Common Areas shall be subject to the provisions of the Bylaws 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 numbered 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 numbered lot shall be used or occupied for single family dwelling purposes only.

(b) A numbered 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 Bylaws 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 Common Areas, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.

(d) No livestock, poultry, or other animals of any kind shall be raised, bred, or kept in any numbered lot or in any Common Areas, except an Owner shall be permitted to keep cats, dogs or other usual household pets and to walk them, subject to rules and regulations adopted by the Association. No animals shall be tied up or penned outside. Owners shall immediately clean up all manure left outside by their pets.

(e) No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles, pickups or vans, shall be stored or parked in any driveway for more than two (2) days. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicles, and assess the owner of the Lot for the cost of removal.

(f) No activity shall be allowed which unduly interferes with the peaceful possession and use of the numbered lots by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed. No trash or trash containers shall be left outside except on or about the day they are picked up.

(g) Nothing shall be done or kept in any numbered lot or in the Common Areas which will increase the rate of insurance on the Common Areas 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 numbered lot or in the Common Areas which will result in the cancellation of insurance on any numbered lot or any part of the Common Areas 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.

(h) 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.

(i) The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of numbered lots, the Common Areas and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.

(j) Agents or contractors hired by the Board of Directors of the Association may enter any numbered 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 Owners as practicable.

(k) An Owner shall give notice to the Association of every lien against his numbered lot other than permitted mortgages, taxes, and Association assessment, and of any suit or other proceeding which may affect the title to his numbered lot within ten days after the lien attaches or the Owner receives notice of such suit.

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

(m) Neither the Owners nor the Association nor the use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of the numbered lots by the Declarant. The Declarant may make such use of the unsold numbered lots and the Common Areas as may facilitate such completion and sale, including, but not limited to, the maintenance of a model townhouse, the showing of the property and the display of signs.

(n) Police, firemen, emergency units, inspectors and any other public law officials or enforcement agencies shall have the same right of entry same enforcement powers as to the Common Areas as they have to public streets and publicly owned parks and areas.

(o) No sign shall be placed upon any numbered lot except a "for sale" sign of the small type normally used by real estate brokers.

(p) No tower or antennae shall be placed upon any numbered lot or upon the roof of any structure, except with the approval of the Board of Directors or the Architectural Control committee.

(q) No personal property shall be stored or left upon a numbered lot except within the residential structure or garage located upon the numbered lot. Garage doors shall be kept closed except during times of access to the garage or as permitted by the rules of the Association.

Section 3. No Waiver.

Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws 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 numbered 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.

Section 4. Lots Owned by City.

These covenants, restrictions and conditions shall not be applicable to property owned by or dedicated to the City of Earlham, Iowa.

**ARTICLE IX. Bylaws.**

Attached hereto and incorporated herein by this reference are the **Bylaws of Townhomes on Fourth Homeowners Association.**

Dated this 25 day of September, 2006.

FIRST EQUITY BUILDER, LLC

BY   
David Butler, Manager

STATE OF Iowa :  
 :SS  
COUNTY OF MADISON :

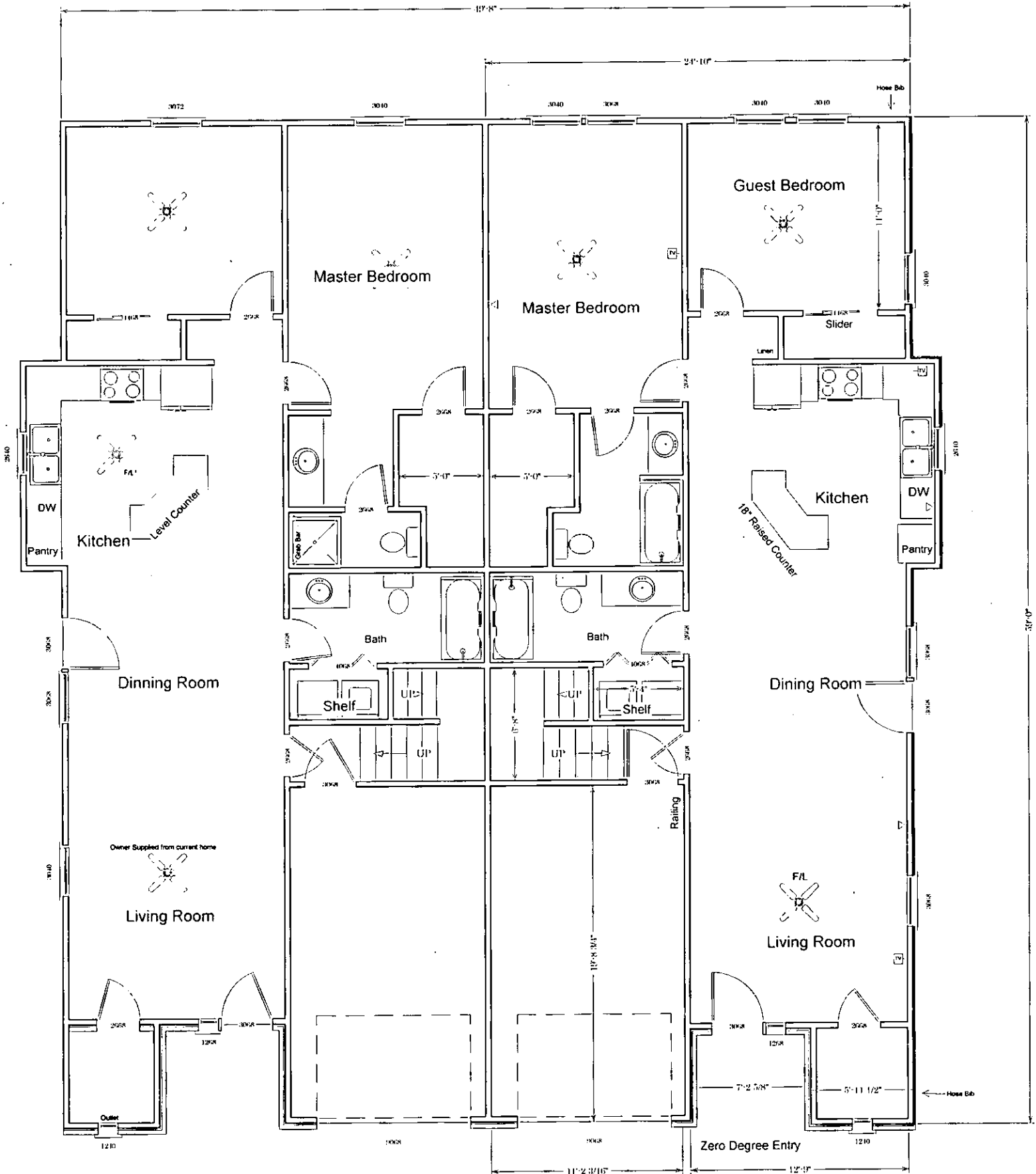
On this 25th day of September, 2006, before me, the undersigned, a Notary public in and for said State, personally appeared David Butler to me personally know, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



*Michele Sible*

Notary Public in and for the State of Iowa

EXHIBIT "A"



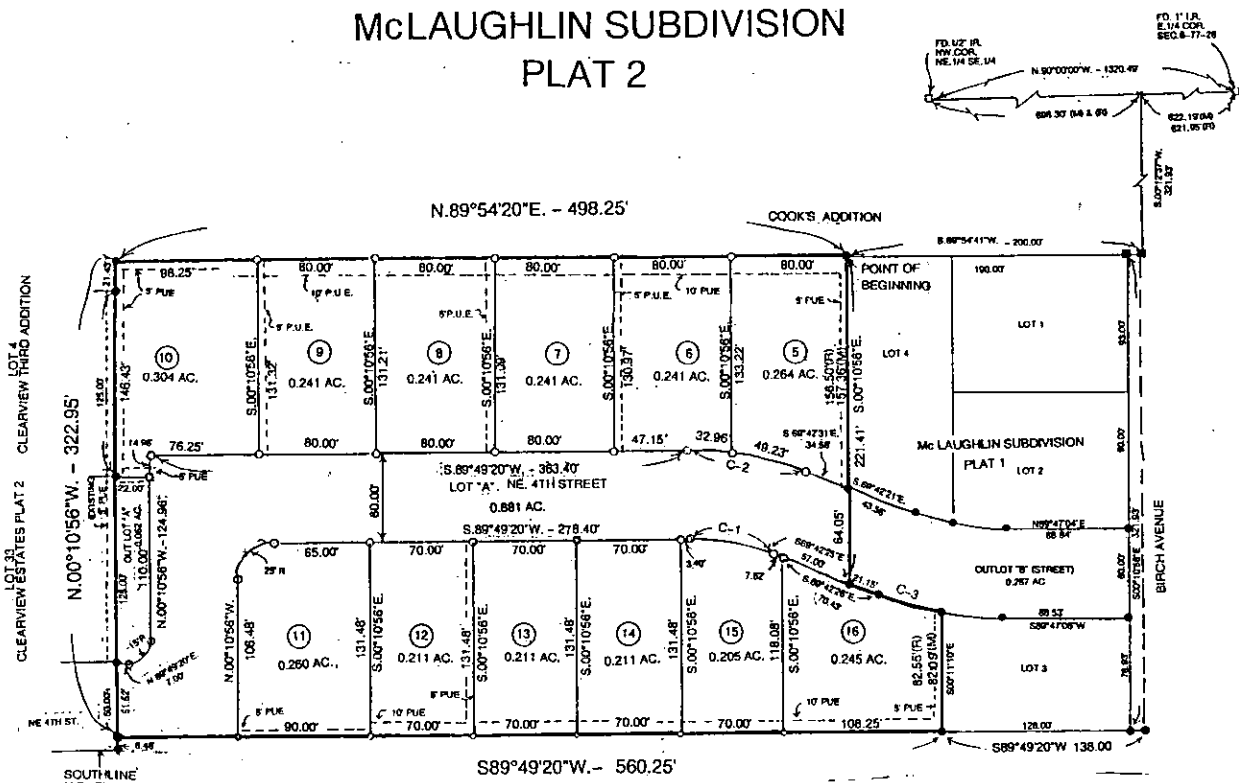
Earlham Townhomes

FOR DEDICATION,  
RESOLUTION &  
CERTIFICATES SEE  
2006-3947

MICHELLE UTSLER, COUNTY RECORDER  
MADISON IOWA

VANCE & HOCHSTETLER, P.C. CONSULTING ENGINEERS, WINTERSET, IOWA (515)462-3995  
CHARLES T. VANCE, 110 WEST GREEN ST., WINTERSET, IOWA 50273-1533  
JAMES M HOCHSTETLER, 110 WEST GREEN ST., WINTERSET, IOWA 50273-1533

### McLAUGHLIN SUBDIVISION PLAT 2



#### CURVE DATA

	C-1	C-2	C-3
RADIUS	170.00'	230.00'	230.00'
Δ	20°28'28"	20°28'28"	10°53'42"
T	30.70'	41.54'	21.93'
CHORD	60.75'	82.19'	43.74'
BEARING	S79°56'26"E	S79°52'26"E	S75°09'12"E

LOTS 5, 6, 15, & 16 WILL NOT HAVE GRAVITY SEWER SERVICE AVAILABLE FOR BASEMENT LEVELS.  
WATER SUPPLY TO BE CITY OF EARLHAM.  
SEWAGE DISPOSAL SERVICE TO BE CITY OF EARLHAM.

- BUILDING SET BACK - 8'
- SIDE YARD SET BACK - 30'
- FRONT YARD SET BACK - 35'
- REAR YARD SET BACK - 35'

#### FINAL PLAT

McLAUGHLIN SUBDIVISION, PLAT 2  
CITY OF EARLHAM

OWNER/DEVELOPER  
FIRST EQUITY BUILDERS  
65 JEFFERSON  
WINTERSET, IOWA 50273

VANCE & HOCHSTETLER, P.C.  
CONSULTING ENGINEERS  
110 WEST GREEN STREET  
WINTERSET, IOWA 50273  
515-462-3995

#### LEGAL DESCRIPTION:

A part of the West Half of the Northeast Quarter of the Southeast Quarter of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa more particularly described as follows:

Commencing at the East Quarter Corner of Section 6, Township 77 North, Range 28 West of the 5<sup>th</sup> P.M., City of Earlham, Madison County, Iowa; Thence North 90°00'00" West 622.19 feet along the North line of the Southeast Quarter of said Section 6; thence South 00°12'37" West 321.93 feet to the Southeast Corner of Cook's Addition to the City of Earlham, Iowa; thence South 89°54'41" West 200.00 feet to the Point of Beginning which is the Northwest Corner of Lot 4 of McLaughlin Subdivision, Plat 1, City of Earlham; Thence South 00°10'56" East 221.41 feet along the West line of said Lot 4 projected to the Southwest Corner of Outlet "B" which was dedicated Street right-of-way for Mc Laughlin Subdivision Plat 1; thence South 69°42'26" East 21.15 feet along a line of said Outlet "B"; thence along a line of said Outlet "B" Southeasterly 21.93 feet along a 230.00 foot radius curve concave Northerly with a 43.67 foot chord bearing South 75°09'12" East; thence South 00°11'10" East 82.09 feet along the West line of Lot 3 of Mc Laughlin Subdivision Plat 1 to a point on the South line of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence South 89°49'20" West 560.25 feet along said South line to the Northeast Corner North 00°10'56" West 331.43 feet along the East line of Clearview Estates, Plat 2 and Clearview Third Addition to the Northwest Corner of the South Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of said Section 6; thence North 89°54'20" East 498.25 feet along the North line of said South Half to the Point of Beginning containing 3.834 acres.

Parcel to be dedicated as McLaughlin Subdivision, Plat 2, City of Earlham, Iowa contains 12 residential building lots numbered 5 through 17; Lot A and Parcel "B" to be dedicated as N.E. 4<sup>th</sup> Street right-of-way; and Outlet "A" which will be added to Lot 33 of Clearview Estates, Plat No. 2.

**J. M. HOCHSTETLER**  
#6808

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 9/26/06  
My license renewal date is December 31, 2007  
Pages or sheets covered by this ssal: 1