

Instrument #: 2021-01808  
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XZCV COVENANTS  
Recording Fee: \$ 57.00  
Polly Wright, Recorder, Warren County Iowa



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Prepared by & Return to: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312 (515) 279-9059

Property: See Pages 1 & 2 and Exhibit "A"

Previously Recorded Documents: **Instrument Nos. 2017-07512, 2017-07514, 2017-07515, 2018-03314, 2017-07622, 2017-08300, 2019-09216, and 2020-04926 and Book 97 at Page 518 and Book 97 at Page 650**

**AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS**

**THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS** (this "Amended Declaration") is dated October 28, 2020 and made by **DILIGENT BLOOMING HEIGHTS, LLC**, an Iowa limited liability company, Declarant of the Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights recorded November 1, 2017 as **Instrument No. 2017-07512**, in the records of the Recorder for Warren County, Iowa (the "Declaration").

**WHEREAS**, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions and easements on the following described real estate (the "Plat"):

Lots 1 – 41 and Outlots Y and Z in BLOOMING HEIGHTS, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, all of Outlot Z has been subsequently subdivided and replatted and is now known as street right-of-way for Redbud Street and Lots 1 and 34 all within BLOOMING HEIGHTS PLAT 2, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, the Declaration established the **Blooming Heights Homeowners' Association**, an Iowa non-profit corporation (the "Association"), to own, manage, operate and maintain certain improvements for the mutual and reciprocal benefit of the Owners (defined below) with authority to levy assessments necessary to operate, manage, maintain and administer the association and the improvements for the benefit of the Plat.

**WHEREAS**, the Declaration grants to Declarant during the Reservation Period (defined below) the right to amend the Declaration without the approval or consent of the Association, the Owners or any other party.

**WHEREAS**, Declarant desires to amend the Declaration to subject the following described real estate (the "Additional Land") to the terms of the Declaration upon the filing of this Amended Declaration, and to impose additional covenants, conditions, restrictions and easements upon all real property which is subject to the Declaration:

Lots 1 - 34 and Outlot Y in BLOOMING HEIGHTS PLAT 2, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, all of the land defined as the "easement area" encumbered by that certain Water Detention and Overland Flowage Easement between J.C.P., LC as Grantor and Declarant as Grantee recorded September 1, 2017 as **Instrument No. 2017-07514** (the "JCP Easement"), has been conveyed from Grantor to Declarant by deed recorded May 8, 2018 as **Instrument No. 2018-03314**, and therefore such easement has automatically expired, terminated and is of no further force and effect upon the recording of the deed transferring the easement area to Declarant.

**WHEREAS**, Declarant entered into that certain Facility Maintenance Covenant and Easement (defined below) wherein the Association is obligated to maintain and manage on behalf of the Owners certain storm water detention facilities to control storm water runoff originating from the Plat and other land.

**WHEREAS**, the expansion of the storm water detention facilities as a result of the subdivision and development of the Additional Land has created a need to enlarge the "easement area" of the storm water detention facilities identified in the Facility Maintenance Covenant and Easement to include additional pond area within the Additional Land and other land.

**NOW, THEREFORE**, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Termination of Easement.** The JCP Easement is hereby terminated in its entirety and any and all rights, obligations and easements created or granted thereunder are of no further force or effect.
2. **Definitions.** Article I of the Declaration relating to the definitions of terms used in the Declaration is hereby deleted in its entirety and replaced with the following in lieu thereof:

For purposes of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. **"Additional Land"** shall mean and refer to any real property annexed and subjected to this Declaration.
- B. **"Accessory Structures"** shall mean and refer to other structures or improvements in addition to an Outbuilding such as dog kennels and runs, tennis courts, in ground pools and pool houses.



- C. **"Assessments"** shall mean and refer to the regular assessments, special assessments for capital improvements and operating deficits, and all other charges payable to the Association by the Owners.
- D. **"Association"** shall mean and refer to the Blooming Heights Homeowners' Association, an Iowa non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, as amended.
- E. **"Association Responsibility Elements"** and shall mean and refer to any improvement, easement or feature whether or not fully or partially located upon any Lot, Outlot, or offsite of the Plats for which the Association is obligated to maintain for the common use and benefit of the Owners, including, but not limited to, the following:
- (i) All signs, monuments and monument signs, and similar entrance features and the landscape plantings and materials surrounding the entrance signs.
  - (ii) The landscaping berm along 50th Avenue created pursuant to Private Landscape Buffer Easements recorded November 7, 2019 as **Instrument No. 2019-09216** and May 28, 2020 as **Instrument No. 2020-04926**.
  - (iii) Outlots.
  - (iv) Private road/trail created pursuant to Easement Agreement recorded January 15, 1998 in **Book 97 at Page 518**; and Easement Agreement recorded February 16, 1998 in **Book 97 at Page 650**.
  - (v) Any sidewalk within the Outlots.
  - (vi) Ponds / Storm Water Detention Facilities, private storm sewer, drainage and overland flowage easements.
  - (vii) Any easement document filed in the records of the County Recorder requiring maintenance by the Association.
- F. **"Amended Declaration"** shall mean and refer to a separate instrument filed of record with the County Recorder that annexes and subjects Additional Land to this Declaration and may grant additional covenants, conditions, restrictions and easements as to such Additional Land, or otherwise makes amendments to this Declaration.
- G. **"Board of Directors"** shall mean the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association and shall be referred to as the "Board" in this Declaration.



- H. **"Building Lot"** shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots used for the construction of one dwelling as herein permitted.
- I. **"Bylaws"** shall mean and refer to the Bylaws of the Association adopted by the Board of Directors, as the same may be amended from time to time.
- J. **"City"** shall mean and refer to the city of Norwalk located in Warren County, Iowa.
- K. **"County Recorder"** shall mean and refer to the office of the County Recorder for Warren County, Iowa.
- L. **"Declarant"** shall mean and refer to **Diligent Blooming Heights, LLC**, and any successors and assigns acquiring all of Declarant's ownership interest in the Plats for purposes of development or improvement and who is specifically designated as the successor Declarant in an instrument executed by the immediately preceding Declarant filed of record with the County Recorder.
- M. **"Declaration"** shall mean and refer to the Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights recorded November 1, 2017 as **Instrument No. 2017-07512**, in the records of the County Recorder to which the Plats are subject, as the same may be amended from time to time.
- N. **"Facility Maintenance Covenant and Easement"** shall mean and refer to the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Blooming Heights recorded November 6, 2017 as **Instrument No. 2017-07622** filed of record with the County Recorder, as the same may be amended from time to time.
- O. **"Lot"** shall mean and refer to any numbered parcel of land within the Plats which is platted for a single dwelling and such additional numbered Lots as may hereafter be annexed and subjected to this Declaration.
- P. **"Member"** shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.
- Q. **"Outbuilding"** shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- R. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot.
- S. **"Outlot"** shall mean and refer to any real property within the Plats to which the Association holds title, together with any improvements thereon, for the common use and benefit of the Owners. At the time of recording of this Amended Declaration, the term shall include Outlot Y in Blooming Heights and Outlot Y in Blooming Heights Plat 2. The term no longer applies to Outlot Z in Blooming Heights.



- T. **"Plans"** shall mean and refer to the site plans and building specifications containing the drawings, specifications and other documents from which the dwellings and other improvements and appurtenances thereto within a Lot are to be located, constructed, altered, demolished or removed which may include such details as workmanship, design, materials, products, type of construction, external details, color scheme, elevation, site grade, paving, landscaping, fencing, roofing, solar system, sidewalk, driveway and other similar matters.
- U. **"Plat" or "Plats"** shall mean all real property subject to this Declaration as set forth on Page 1 together with such Additional Land when annexed and subjected to this Declaration by an Amended Declaration, and shall refer to the official subdivision plats filed of record with the County Recorder, including any subsequent subdivision plats for the purpose of annexing Additional Land to this Declaration.
- V. **"Ponds"** shall mean and refer to the easement areas to be used for overland flowage and storm water detention basins together with all pipes, inlets and outlets appurtenant thereto located upon any Lot, Outlot, or offsite of the Plats for the common benefit of the Owners for which the Association is obligated to maintain under this Declaration, any recorded easement document and pursuant to the Facility Maintenance Covenant and Easement. At the time of recording of this Amended Declaration, the existing Pond area is located upon and within the following land: Outlot Y in Blooming Heights, Outlot Y in Blooming Heights Plat 2, Lots 29 – 34 in Blooming Heights Plat 2, and upon other land, all more particularly described and depicted in **Exhibit "A"**.
- W. **"Storm Water Detention Facilities"** shall mean and refer to the easement areas to be used for overland flowage, drainage and storm water detention basins together with all pipes, inlets and outlets appurtenant thereto located upon the Plats for the common benefit of the Owners for which the Association is obligated to maintain under this Declaration or any recorded easement document.
- X. **"Reservation Period"** shall mean and refer to the period of time until Declarant has sold all of the Lots and conveyed the Outlots within the Plats, during which period Declarant reserves the right to amend this Declaration, to have sole voting control and authority with respect to the Association and Board, to control architectural review, to install entrance and directional signs and monuments, to create, dedicate and repair easements, and to exercise any and all other rights and privileges under this Declaration, the Articles and the Bylaws.
- Y. Words and phrases in this Declaration, including the acknowledgement, shall be construed as in the singular or plural number, unless the context permits only one such number.
- Z. Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless



the definition expressly states otherwise. Declarant shall have the final decision as to the meaning of any defined word or undefined term used in this Declaration.

3. **Additional Land.** The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations and easements of the Declaration and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the same terms, conditions, duties and assessments as described in the Declaration.

4. **Outlots.** The Association shall be the owner of the Outlots and timely pay all real estate taxes and assessments levied against the Outlots. The Association shall have sole control and jurisdiction over the Outlots, and all improvements and easements located thereon. Outlot Y of BLOOMING HEIGHTS was conveyed to the Association under Warranty Deed recorded November 27, 2017 as **Instrument No. 2017-08300**. Outlot Y of BLOOMING HEIGHTS PLAT 2 shall be conveyed by Declarant to the Association and the Association shall hold and maintain such land as an Outlot pursuant to the terms and conditions described in the Declaration.

5. **Building Area Design and Construction.** Article IV of the Declaration relating to building area design and construction is amended to include the following:

Q. For BLOOMING HEIGHTS PLAT 2, one story and ranch dwellings must have a ground floor finished area of not less than 1,650 square feet; one and one-half story, split-level and split foyer dwellings must have a finished area of not less than 2,000 square feet; and two-story dwellings must have a finished area of not less than 2,200 square feet.

R. Outbuildings shall be constructed no larger than 20 x 20 square feet.

6. **Ponds and Storm Water Detention Facilities.** Article XVIII (B) and Article XXIV of the Declaration relating to the existing pond and maintenance of the same are hereby deleted in their entirety and combined and replaced with the following in lieu thereof:

**Ponds and Storm Water Detention Facilities.** The Ponds within the Plats are intended to be used to control surface water drainage and storm water detention needs of the Plats only and are not for recreational purposes. Any recreational or unauthorized use is strictly prohibited, except for fishing from the shoreline by the Owners of Lots bordering the Ponds. Nothing shall be altered in, constructed in, or removed from the Ponds or Storm Water Detention Facilities except upon consent of the Board. Except as expressly provided in this Declaration or any recorded easement document, no party (including Owners), other than Declarant or the Association, shall have the right to use or improve the Ponds or Storm Water Detention Facilities.

**Maintenance by Association.** The Association shall be responsible for maintenance of the storm water detention basin improvements relating to the Ponds and Storm Water Detention Facilities within the Plats. Such maintenance obligations shall include, but are not limited to, reconstruction, repair, replacement, inspection, grading, dredging, mowing, replacement of permitted vegetation and removal of trash, litter, debris



and obstructions to the flow of surface water. The shoreline shall be kept and maintained in a manner consistent with a natural pond edge. The dam and appurtenant structures shall be kept in good condition and state of repair through routine inspection for erosion, settlement, sinkholes, seepage, wet areas, runoff, vegetative cover, rodent damage and any other visible deficiencies. All maintenance shall be done in compliance with the plans and specifications approved by the City to meet any storm water management plan on file with the City, and as required under the Facility Maintenance Covenant and Easement.

The Association shall not be responsible for any maintenance or upkeep of the land of the Storm Water Detention Facilities or the land of the Pond area within a Lot to the shoreline (including all land within the Outlot between the Lot line to the shoreline), nor for the land between the shoreline and the Lot line of Lots abutting the Ponds (such as Lots 19 and 20 of Blooming Heights), and that responsibility shall remain with the Owner. The Association may, however, perform such maintenance should it determine in its sole discretion such maintenance is needed.

**Maintenance by Owners.** The Owner and/or occupant of each Lot encumbered with maintenance of the land of the Storm Water Detention Facilities or Ponds shall keep the land free and clear of bushes, brush, trash, litter, debris, weeds, undergrowth, objects, landscape elements, dirt fill, fences, buildings, structures, and other obstructions to the natural flow of surface water and well-maintained to promote the growth of any of ground-cover plantings, native vegetation, prairie grass or lawn grass to be mowed on a regular basis, at the Owner's sole discretion. Trees shall be trimmed or pruned regularly and treated as needed to minimize the effects of disease, pests or minor damage by wind, lightening or other natural forces. Damaged, diseased, decaying and dead trees shall be promptly removed. All plantings and maintenance shall be done in compliance with the plans and specifications approved by the City to meet any storm water management plan on file with the City.

**Responsibility for Willful or Negligent Acts.** No Owner or occupant shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Ponds or Storm Water Detention Facilities. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by any intentional, negligent or careless act by such Owner, or by any family, guest, employee, agent, or lessee of such Owner. Any such expense shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

**Restricted Access to Ponds.** The Pond area within the boundaries of the Lots are privately owned by the Owners of those Lots for the private use, enjoyment and benefit of the Owners of such Lots. An Owner has a right of access to the Ponds from the Owner's Lot only. No person, including the general public and other Lot Owners, shall be allowed to enter upon or access the Ponds from the Lots or from the Outlots. The general public and other Owners are not permitted access to the Ponds without being accompanied by and under the supervision of an Owner and/or occupant of a Lot that borders the Ponds.

**Use of Ponds.** The Ponds shall be used strictly in accordance with the provisions of this Declaration and shall be subject to the following restrictions:



- (a) No swimming by pets or persons shall be allowed.
- (b) No floating devices of any type or swimming platforms, trampolines, slides, or similar objects shall be permitted.
- (c) No ice houses or boathouses shall be permitted, and ice skating is prohibited.
- (d) No pier, dock or other permanent structure shall be permitted.
- (e) No electrical lines or systems shall be installed.
- (g) No lawn fertilizer shall be used or sprayed within twenty-five (25) feet of the shoreline.
- (h) No kayaks, canoes, boats, motorized or otherwise, shall be permitted.
- (i) Fishing is permitted from the shoreline by the Owners of Lots which border or contain the Pond land; however, there shall be no transporting or stocking of fish without the prior consent of the Association.
- (j) There shall be no dumping of any materials, including grass clippings, leaves or garden debris, branches, landscaping materials, ash, soil, garbage, tires, or other similar materials, into the water.
- (k) No hazardous substance, pollutant or contaminant, or hazardous waste, including, but not limited to, asbestos and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by state, federal or local law shall be discharged into the water.

7. **Access Easement.** Declarant hereby covenants and agrees that all of its right, title and interest in and to that certain access easement across Lots 19 and 20 of Blooming Heights granted in favor of Declarant as Grantee for purposes of accessing Outlot Y of Blooming Heights (the Pond) under the Access Easement recorded November 1, 2017 as **Instrument No. 2017-07515** shall automatically transfer to the Association at the end of the Reservation Period.

8. **Access for Maintenance.** The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through each Lot for the purpose of performing its maintenance obligations of the Association Responsibility Elements and shall repair any damage to the Lot resulting from such access.

9. **Indemnification by Association.** The Association hereby indemnifies and saves the Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from the maintenance of the Association Responsibility Elements, except if caused by the act or negligence of the Owner, or by any family, guest, employee, agent, or lessee of such Owner.





10. **Indemnification by Owner.** The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the Declarant, the other Owners, the Association and their heirs, administrators, successors and/or assigns, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person, or damage to or destruction of any property caused by the condition of or in connection with accidents in the Outlots or out of the performance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified parties hereto.

11. **Covenant for Assessments.** Article XXV (D) (3) of the Declaration relating to the share of Assessments levied by the Association is amended as follows:

The Assessments levied upon and against the Lots and Owners thereof, shall be a share of the total amount of each Assessment prorated equally among all Lots in the Plats, which Assessments shall include the assessment levied for maintenance of Outlot "Y" in Blooming Heights, now allocated equally among all Lots in the Plats and no longer allocated 50% to Lots 19 and 20 and 50% to the other Lots in Blooming Heights.

12. **Conveyance of Outlots and Additional Responsibility Elements.** Declarant shall have the right at any time to convey additional Outlots to the Association or to add additional Association Responsibility Elements. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Outlots to the Association in the future. The Association shall be obligated to accept any additional Outlot so conveyed by Declarant and to hold and maintain the additional Outlot pursuant to the terms of this Declaration.

13. **Subjecting Additional Land to Declaration.** Declarant shall have the irrevocable right to subject Additional Land to the terms of this Declaration at any time in the future without the consent of the Association, the Owners, or any other party. The Additional Land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an Amended Declaration with the County Recorder.

14. **Assignment of Declaration by Declarant.** This Declaration may be assigned by Declarant to a successor-in-interest by an instrument executed by both parties and filed of record with the County Recorder. Upon such assignment, the initial or preceding Declarant shall have no further rights and obligations in connection with this Declaration, the Association and the Plats.

15. **Ratification.** Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.



IN WITNESS WHEREOF, the undersigned has executed this Amended Declaration as of the date first written above.

**DECLARANT:**

**DILIGENT BLOOMING HEIGHTS, LLC,**  
an Iowa limited liability company

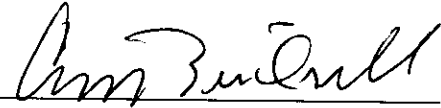
By: Diligent Development Group, LLC,  
an Iowa limited liability company, its Manager

By:   
David A. Brown, Manager

STATE OF IOWA, COUNTY OF DALLAS:

This record was acknowledged before me on January 18<sup>th</sup>, 2020, by David A. Brown, Manager of Diligent Development Group, LLC the Manager of Diligent Blooming Heights, LLC.

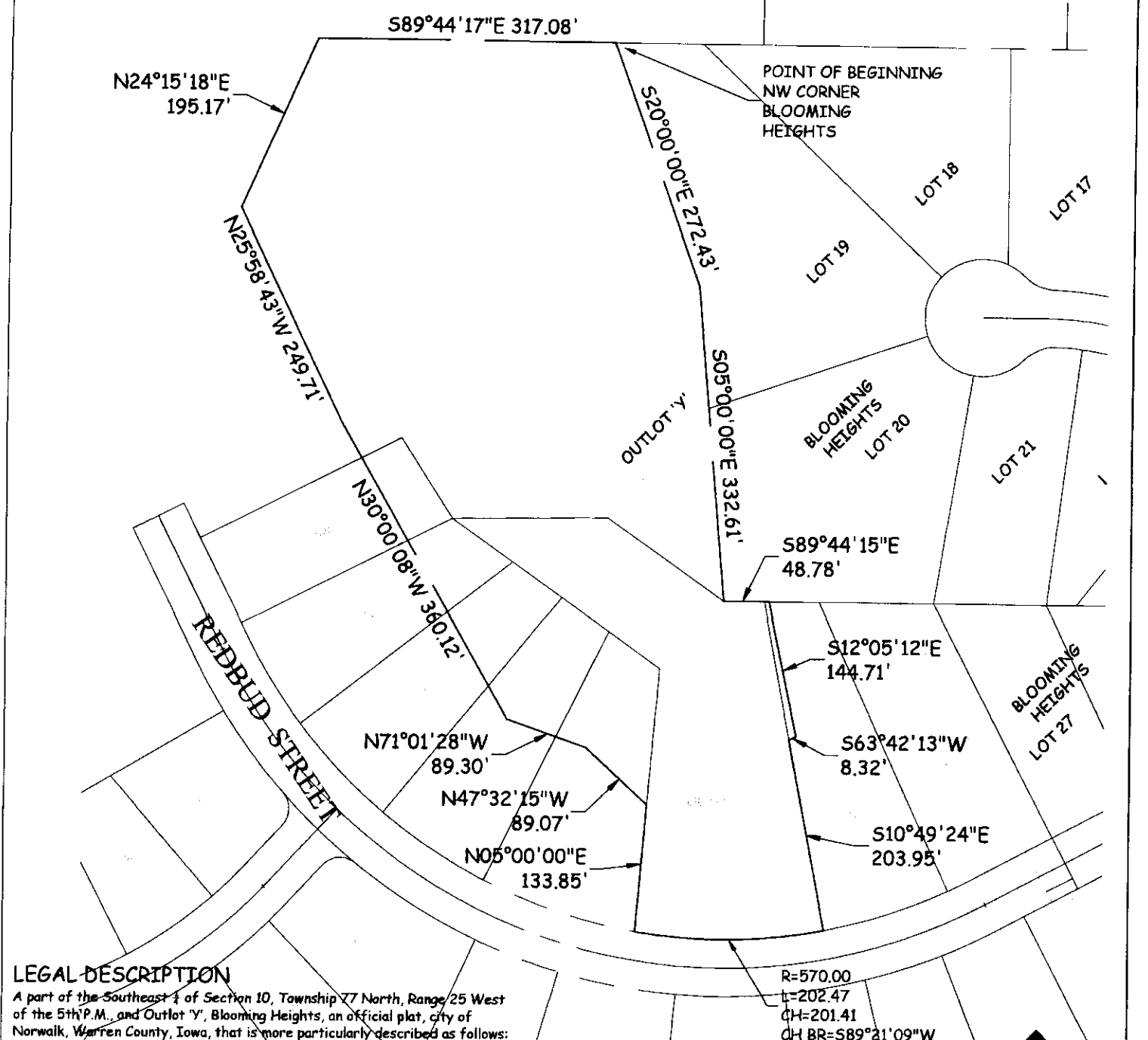


By:   
Notary Public



# EXHIBIT 'A'

## STORM WATER DETENTION & OVERLAND FLOWAGE EASEMENT



### LEGAL DESCRIPTION

A part of the Southeast  $\frac{1}{4}$  of Section 10, Township 77 North, Range 25 West of the 5th P.M., and Outlot 'Y', Blooming Heights, an official plat, city of Norwalk, Warren County, Iowa, that is more particularly described as follows:

Beginning at the Northwest corner of Blooming Heights, an official plat, city of Norwalk, Warren County, Iowa; thence  $S20^{\circ}00'00''E$ , 272.43 feet along the East line of Outlot 'Y', said Blooming Heights; thence  $S05^{\circ}00'00''E$ , 332.61 feet along said East line to the Southeast corner of said Outlot 'Y', and to the Southwest corner of Lot 20, said Blooming Heights; thence  $S89^{\circ}44'15''E$ , 48.78 feet along the South line of Lot 20 of said Blooming Heights; thence  $S12^{\circ}05'12''E$ , 144.71 feet; thence  $S63^{\circ}42'13''W$ , 8.32 feet; thence  $S10^{\circ}49'24''E$ , 203.95 feet, to a non-tangent 570.00 feet radius curve concave to the Northwest; thence Southwesterly 202.47 feet along said curve, said curve having a chord length of 201.41 feet and a chord bearing of  $S89^{\circ}21'09''W$ ; thence  $N05^{\circ}00'00''E$ , 133.85 feet; thence  $N47^{\circ}32'15''W$ , 89.07 feet; thence  $N71^{\circ}01'28''W$ , 89.30 feet; thence  $N30^{\circ}00'08''W$ , 360.12 feet; thence  $N25^{\circ}58'43''W$ , 249.71 feet; thence  $N24^{\circ}15'18''E$ , 195.17 feet to the North line of the Southeast  $\frac{1}{4}$  of Section 10, Township 77 North, Range 25 West of the 5th P.M.; thence  $S89^{\circ}44'17''E$ , 317.08 feet along said North line to the Northwest corner of said Blooming Heights, and to Point of Beginning.

**COOPER CRAWFORD**

& ASSOCIATES, L.L.C.

CIVIL ENGINEERS

475 S. 50th Street, Suite 800, West Des Moines, IA 50265  
Phone: (515) 224-1344 Fax: (515) 224-1345

0 75 150  
SCALE: 1"=150'  
DATE: 1-27-2021

JOB NUMBER  
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