

Prepared by: Kevin D. Olson, 1400 5<sup>th</sup> Street, Coralville, Iowa 52241 (319) 351-2277  
Return to: City of West Branch, 110 Poplar Street, West Branch, Iowa 52358 (319) 643-5888

RESOLUTION NO. 1787

RESOLUTION APPROVING THE SUBDIVIDER'S AGREEMENT FOR CEDARS EDGE, WEST BRANCH, IOWA.

WHEREAS, as part of the approval of the Final Plat of Cedars Edge, West Branch, Iowa, Cedars Edge Properties, LLC (the "Subdivider") is required to install certain municipal improvements; and

WHEREAS, to that end, the City Attorney, with the assistance of the City Engineer, have negotiated a Subdivider's Agreement that outlines the responsibilities of the Subdivider as it pertains to construction of said municipal improvements; and

WHEREAS, it is now necessary for the City Council to approve said Subdivider's Agreement.

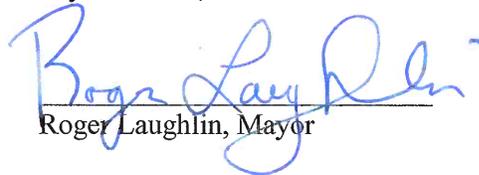
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Branch, Iowa, that the aforementioned Subdivider's Agreement be and the same is hereby approved.

BE IT FURTHER RESOLVED that the Mayor and the City Clerk are hereby directed to execute this Agreement on behalf of the City.

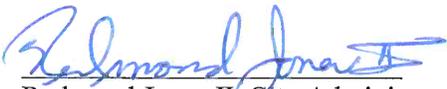
BE IT FURTHER RESOLVED, that the City Clerk should file a copy of this Subdivider's Agreement in the office of the Cedar County Recorder.

\* \* \* \* \*

Passed and approved this 4<sup>th</sup> day of March, 2019.

  
Roger Laughlin, Mayor

ATTEST:

  
Redmond Jones II, City Administrator/Clerk

**SUBDIVIDER'S AGREEMENT  
CEDARS EDGE SUBDIVISION**

This Agreement is made by and between Cedars Edge Properties, LLC, an Iowa limited liability company, hereinafter referred to as the "Subdivider", and the City of West Branch, Iowa, a Municipal corporation, hereinafter referred to as the "City".

SECTION 1. MUNICIPAL IMPROVEMENTS; CONSTRUCTION AND  
INSTALLATION OF MUNICIPAL IMPROVEMENTS.

In consideration of the City approving the Final Plat and subdivision of real estate known and designated as Cedars Edge, a Subdivision of the City of West Branch, Iowa, prior to Subdivider's installation and construction of the required municipal improvements, Subdivider shall make escrow provisions as provided herein. Municipal improvements shall include three (3) 29-foot PCC streets known as Lazy Brook Drive, Ember Lane and Birdie Drive, sanitary sewers, water mains, storm sewers, sump-pump line, storm water detention basin, mail box clusters and street lighting. Said municipal improvements shall be constructed and installed in accordance with construction plans and specifications approved by the City Engineer of the City who shall have the right to make or authorize occasional inspections of the work in progress. Said inspections shall not relieve or release the Subdivider from the responsibility to construct the municipal improvements in accordance with the approved plans and specifications. Notwithstanding anything to the contrary herein, Subdivider shall not be required to construct Birdie Drive until such time as the Cedar Johnson Road adjacent to the Subdivision is improved by the City.

SECTION 2. SIDEWALKS.

The Subdivider agrees that no later than five (5) years from the date of the City's Resolution approving the Final Plat of Cedars Edge Subdivision, West Branch, Iowa, or upon seventy-five percent (75%) of the development of the lots therein, whichever occurs first, to install sidewalks abutting each residential lot which shall be at least five (5) feet wide and constructed according to the plans and specifications as approved by the City Engineer. The escrow provision need not include the sidewalk installation, however, the same shall remain a lien against each lot until accepted and released by the City. Notwithstanding anything to the contrary herein, the Subdivider's obligation to install sidewalks on Lots 11-20 adjacent to Cedar Johnson Road shall not commence until such time as Cedar Johnson Road is improved by the City. In the event dwellings have been constructed on Lots 11-20 at the time Cedar Johnson Road improvements are completed, the sidewalks on Lots 11-20 adjacent to Cedar Johnson Road shall be constructed within one (1) year of the Cedar Johnson Road Improvements. Lot 16 shall have sidewalks constructed abutting Cedar Johnson Road and Ember Lane. Lots 18-19 shall have sidewalks constructed abutting Cedar Johnson Road and Lazy Brook Drive. Lot 17 shall

have sidewalks constructed abutting Cedar Johnson Road, Lazy Brook Drive and Ember Lane. Lot 20 shall have sidewalks constructed abutting Cedar Johnson Road, Birdie Drive and Lazy Brook Drive.

### SECTION 3. ESCROW MONIES

The Subdivider shall deposit with the City Clerk in escrow an amount equal to the estimated cost of constructing the municipal improvements plus 10% thereof as determined by the City Engineer and said deposit shall be referred to as "Municipal Improvements Escrow". The escrow deposit shall be in the form of cash, bank check that will be cashed, bond or irrevocable letter of credit, all as approved by the City Attorney.

### SECTION 4. USE OF ESCROW MONIES

Except with regard to construction of Birdie Drive, if after one year from the date of the City's resolution approving the Final Plat of the Subdivision, the municipal improvements have not been constructed and installed for the Subdivision, then City may use and/or make demand upon the municipal improvements escrow to construct and install said municipal improvements. The City shall release any bond or letter of credit or refund to the Subdivider any portions of or any excess escrow monies not used by the City after construction, installation and acceptance of all of the municipal improvements. Any cash or check held in escrow shall be released as needed for payment of the costs of the improvements.

With regard to construction of Birdie Drive, if after one year from the date of the City's improvement of Cedar Johnson Road, Birdie Drive has not been constructed and installed for the Subdivision, then City may use and/or make demand upon the municipal improvements escrow to construct and install said municipal improvement. The City shall release any bond or letter of credit or refund to the Subdivider any portions of or any excess escrow monies not used by the City after construction, installation and acceptance of Birdie Drive. Any cash or check held in escrow shall be released as needed for payment of the costs of the improvements.

In addition, the City may make use of any of the proceeds of the security provided by Subdivider in order to enforce the erosion control requirements pursuant to Section 170.15(15) of the West Branch Code of Ordinances.

### SECTION 5. WAIVER

Except with regard to construction of Birdie Drive and construction of a building on Lot 26, in the event the Subdivider shall sell or convey or make application for a building permit on any lot or lots in the subdivision without having first constructed and installed all

the municipal improvements for the Subdivision, then the City shall have the right to proceed therewith as provided in Section 4 above.

#### SECTION 6. LIEN

The costs of the construction and installation of the municipal improvements shall be a lien and charged against all lots in said Subdivision and need not meet the requirements of notice, benefit or value as provided for by the Code of Iowa for assessing said municipal improvements which may exceed the municipal improvements escrow.

#### SECTION 7. RELEASE

The City agrees that when all municipal improvements have been constructed and installed for the Subdivision, except for construction of Birdie Drive, to the satisfaction of the City and upon acceptance by resolution, to furnish the Subdivider a good and sufficient Release for filing in the office of the County Recorder so that this Agreement will not constitute a cloud upon the title of the Lots of the subdivision and the City shall release the escrow. City shall retain sufficient amount of Subdivider's escrow to ensure construction of Birdie Drive and at such time as construction of Birdie Drive is completed to the satisfaction of the City, City shall release said escrow.

Notwithstanding anything to the contrary herein, upon Subdivider making the required escrow under Paragraph 1 herein, and the City approving the Final Plat for the Subdivision, the City shall release Lot 26 of the Subdivision from any lien created by this Agreement and Subdivider shall be permitted to convey and transfer Lot 26. However, the Subdivider expressly agrees that no occupancy permit for any building constructed on Lot 26 shall be given by the City until the municipal improvements have been constructed. Notwithstanding anything to the contrary herein, conditioned upon approval of the City's Building Official, the City may issue a temporary occupancy permit for a building constructed on Lot 26 for specific events.

#### SECTION 8. PUBLIC SERVICES.

Subdivider agrees that public services including, street maintenance, snow plowing, water and sanitary sewer service, will not be provided in the Subdivision until the municipal improvements have been constructed, installed and accepted by the City.

#### SECTION 9. PAYMENT OF SANITARY SEWER CONNECTION FEE.

Prior to the approval of the Final Plat of Cedars Edge Subdivision, the Subdivider shall pay to the City the sum of \$250.00 for each of Lots 11-26 as payment of the Sanitary Sewer Connection Fee District.

SECTION 10. STORM WATER EROSION CONTROL AND TOPSOIL REQUIREMENTS.

Subdivider or its assigns or successors in interest shall be responsible for the maintenance of appropriate erosion control measures during construction of the infrastructure and during building of any structures in the Subdivision. In addition, the Subdivider shall be responsible for the placement of 4-inches of topsoil or allowed substitute upon each lot after the structures have been constructed prior to the issuance of any occupancy permit for said structure.

SECTION 11. ASSIGNS AND SUCCESSORS

This agreement shall be binding upon the parties, their assigns or successors in interest and it is understood that the City, at its option, may contract for the construction and installation of the municipal improvements as provided above.

SECTION 12. ACCESS

Lots 11 and 16 -20 shall not be permitted to access to and from Cedar Johnson Road for purposes on ingress and egress. Lots 12-15 shall be permitted access to and from Cedar Johnson Road for purposes of ingress and egress.

SECTION 13. OUTLOT A

Developer shall be permitted to resubdivide Outlot A in order to develop residential lots.

Dated this 11<sup>th</sup> day of March, 2019.

*[Signatures and acknowledgments follow on next page]*

**Cedars Edge Properties, LLC:**

**City of West Branch:**

By: Jerry D. Sexton  
Jerry D. Sexton, Manager/Member

Roger Laughlin  
Roger Laughlin, Mayor

ATTEST:

By: Tammy J. Sexton  
Tammy J. Sexton, Manager/Member

Redmond Jones II  
Redmond Jones II, City Administrator/Clerk

**STATE OF IOWA, COUNTY OF CEDAR, ss:**

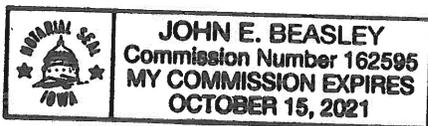
On this 12<sup>th</sup> day of March, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Roger Laughlin and Redmond Jones II, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Administrator/Clerk, respectively, of the City of West Branch, Iowa; a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as passed by Resolution of the City Council; and Roger Laughlin and Redmond Jones II acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.



Leslie Brick  
Notary Public

**STATE OF IOWA, COUNTY OF Johnson, ss:**

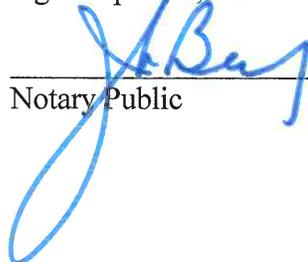
This instrument was acknowledged before me on the 11<sup>th</sup> day of March, 2019, by Jerry D. Sexton as Member/Manager of Cedars Edge Properties, LLC.



John E. Beasley  
Notary Public

STATE OF IOWA, COUNTY OF Johnson, ss:

This instrument was acknowledged before me on the 11<sup>th</sup> day of March, 2019,  
by Tammy J. Sexton as Member/Manager of Cedars Edge Properties, LLC.

  
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Notary Public

