



DEPARTMENT OF PLANNING, BUILDING & ZONING

111 West Fox Street • Room 203

Yorkville, IL • 60560

(630) 553-4141

Fax (630) 553-4179

**Petition 20-30
Kris and Hillary Wieschhaus
Driveway Setback Variance**

INTRODUCTION

Kris and Hillary Wieschhaus installed a driveway without a permit at 9261 Kennedy Road in Bristol Township.

A large portion of the property is within the one hundred (100) year floodplain (Zone AE).

The driveway was constructed within the required setback to avoid the floodplain.

The application materials are included as Attachment 1. The plat of survey is included as Attachment 2. The aerial of the property with showing the driveway floodplain is included as Attachment 3.

SITE INFORMATION

PETITIONER Kris and Hillary Wieschhaus

ADDRESSES 9261 Kennedy Road, Yorkville

LOCATION Approximately 0.4 Miles East of Route 47 on the North Side of Kennedy Road

TOWNSHIP Bristol

PARCEL #S 02-21-200-028

LOT SIZE 6.4 +/- Acres

EXITING LAND USE Vacant

ZONING R-1

LRMP	Current Land Use	Vacant
	Future Land Use	Suburban Residential (1.00 DU/Acre Max)
	Roads	Kennedy Road is a Minor Collector Road Maintained by Bristol Township
	Trails	Yorkville has Trail Planned Along Kennedy Road
	Floodplain/ Wetlands	Blackberry Creek is Located North of the Property and a Large Portion of the Property is in the 100 Year Flood Plain (Zone AE); Base Flood Elevation is 625.7

REQUESTED ACTION Variance to allow installation of a driveway at zero feet (0') from the eastern property line instead of the required five feet (5') setback.

APPLICABLE REGULATIONS §11:02.F.7.b – Side Yard Setback for Driveways

§13:04 – Variation Procedures and Requirements

SURROUNDING LAND USE				
Location	Adjacent Land Use	Adjacent Zoning	LRMP	Zoning within ½ Mile
North	Single Family Residential	R-2 (Yorkville)	Suburban Neighborhoods (Yorkville)	R-2 and M-2 (Yorkville)
South	Single Family Residential	R-3 (County)	Suburban Residential (1.00 DU/Acre Max)	R-3 (County) R-2 (South)
East	Single Family Residential and Vacant	R-1 (County)	Suburban Residential	A-1 and R-3 (County)
West	Farmstead	R-1 (Yorkville)	Estate Residential (Yorkville)	A-1 and R-3 (County) R-1 and B-3 (Yorkville)

GENERAL INFORMATION

The Petitioners wish to construct a house on the property in the future.

As noted on the plat of survey (Attachment 2), the base flood elevation is 625.7. The driveway elevations are above the base flood elevation.

As noted on the aerial (Attachment 3), the driveway is not located in the one hundred (100) year floodplain, but is located in the five hundred (500) year flood plain.

The proposed driveway will be approximately eighteen feet (18') in width.

The property has been zoned R-1 since 1988.

BRISTOL TOWNSHIP

Bristol Township was emailed this proposal on November 19, 2020.

UNITED CITY OF YORKVILLE

The United City of Yorkville was emailed this proposal on November 19, 2020.

BRISTOL-KENDALL FIRE PROTECTION DISTRICT

The Bristol-Kendall Fire Protection District was emailed this proposal on November 19, 2020.

FINDINGS OF FACT

§ 13:04.A.3 of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to grant variations. They are listed below in *italics*. Staff has provided findings in **bold** below based on the recommendation:

*That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. **Because of the large amount of one-hundred-year floodplain on the property, the***

Petitioners are limited to where a driveway can be installed. The proposed location allows the Petitioners to install the driveway without impacting the floodplain.

That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. This is true. The Petitioners wish to obtain the variance because of the location of the floodplain on the property and no other condition.

That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. The owners did not create the floodplain on the property and have limited options for constructing a driveway at other locations on the property without impacting the floodplain.

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. The requested variance should not negatively impact any of the neighbors and will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.

That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. Adding the proposed driveway will not impair any of the above items.

RECOMMENDATION

Staff recommends approval of the requested variance subject to the following conditions:

1. The setback on the east side of the subject property may be reduced to zero feet (0') for the installation of the driveway only. This variation shall not apply to any of the other required setbacks contained in the Kendall County Zoning Ordinance.
2. The driveway shall be installed at substantially the location shown on the plat of survey shown on Attachment 2.
3. Installation of the driveway shall follow all applicable Federal, State, and Local laws.
4. This variance shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns.

ATTACHMENTS

1. Application (Including Petitioner's Findings of Fact)
2. Plat of Survey
3. Aerial


DEPARTMENT OF PLANNING, BUILDING & ZONING

 111 West Fox Street • Yorkville, IL • 60560
 (630) 553-4141 Fax (630) 553-4179

APPLICATION

PROJECT NAME _____ FILE #: _____

NAME OF APPLICANT Kris & Hillary Wieschhaus		
CURRENT LANDOWNER/NAME(S) Kris & Hillary Wieschhaus		
SITE INFORMATION ACRES 6	SITE ADDRESS OR LOCATION 9261 Kennedy Rd	ASSESSOR'S ID NUMBER (PIN) 02-21-200-028
EXISTING LAND USE Vacant (future home site)	CURRENT ZONING Residential	LAND CLASSIFICATION ON LRMP Suburban Residential
REQUESTED ACTION (Check All That Apply):		
<input type="checkbox"/> SPECIAL USE	<input type="checkbox"/> MAP AMENDMENT (Rezone to _____)	<input type="checkbox"/> VARIANCE
<input type="checkbox"/> ADMINISTRATIVE VARIANCE	<input type="checkbox"/> A-1 CONDITIONAL USE for: _____	<input type="checkbox"/> SITE PLAN REVIEW
<input type="checkbox"/> TEXT AMENDMENT	<input type="checkbox"/> RPD (<input type="checkbox"/> Concept; <input type="checkbox"/> Preliminary; <input type="checkbox"/> Final)	<input type="checkbox"/> ADMINISTRATIVE APPEAL
<input type="checkbox"/> PRELIMINARY PLAT etc.)	<input type="checkbox"/> FINAL PLAT	<input type="checkbox"/> OTHER PLAT (Vacation, Dedication, AMENDMENT TO A SPECIAL USE (<input type="checkbox"/> Major; <input type="checkbox"/> Minor)
¹PRIMARY CONTACT Kris Wieschhaus	PRIMARY CONTACT MAILING ADDRESS	PRIMARY CONTACT EMAIL
PRIMARY CONTACT PHONE #	PRIMARY CONTACT FAX #	PRIMARY CONTACT OTHER #(Cell, etc.)
²ENGINEER CONTACT	ENGINEER MAILING ADDRESS	ENGINEER EMAIL
ENGINEER PHONE #	ENGINEER FAX #	ENGINEER OTHER # (Cell, etc.)
I UNDERSTAND THAT BY SIGNING THIS FORM, THAT THE PROPERTY IN QUESTION MAY BE VISITED BY COUNTY STAFF & BOARD/ COMMISSION MEMBERS THROUGHOUT THE PETITION PROCESS AND THAT THE PRIMARY CONTACT LISTED ABOVE WILL BE SUBJECT TO ALL CORRESPONDANCE ISSUED BY THE COUNTY.		
I CERTIFY THAT THE INFORMATION AND EXHIBITS SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I AM TO FILE THIS APPLICATION AND ACT ON BEHALF OF THE ABOVE SIGNATURES.		
SIGNATURE OF APPLICANT		DATE

 FEE PAID:\$ _____
 CHECK #: _____

¹Primary Contact will receive all correspondence from County

²Engineering Contact will receive all correspondence from the County's Engineering Consultants

Please fill out the following findings of fact to the best of your capabilities. § 13.04 of the Zoning Ordinance outlines findings that the Zoning Board of Appeals shall take into consideration the extent to which the following conditions have been established by the evidence:

Overview:

This variance is to allow the placement of a driveway directly along the east side of 9261 Kennedy Road (02-21-200-028). The driveway to the property was placed on the property line and lacks the 5 foot setback required by code.

The adjoining neighbor has agreed that the placement of the driveway is fine and has no issues with the current configuration.

That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out.

Due to the topographical condition of the property it is impracticable to place the driveway anywhere else to low-lying areas of the property.

That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification.

That the alleged difficulty or hardship has not been created by any person presently having an interest in the property.

It has not

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located.

It will not.

Note: This property is not part of a neighborhood.

That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood.

The variation will have no impact on light or supply of air to the adjacent property.

Form No. 1402.06
ALTA Owner's Policy



Policy Page 1
Policy Number: [REDACTED]

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental

police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

[REDACTED]
Dennis J. Gilmore, President

[REDACTED]
Greg L. Smith, Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in

Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs,

attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1650 W. Big Beaver Road, P.O. Box 1289, Troy, MI 48099.

POLICY OF TITLE INSURANCE



**First American Title Insurance Company
ALTA Owner's Policy
Schedule A**

File No. [REDACTED]

Amount of Insurance
[REDACTED]

Date of Policy

June 5, 2020
or the date of recording of the
Vesting Deed, whichever is later

Name of Insured:

Kristopher T Wieschhaus and Hillary M Wieschhaus

1. The estate or interest in the land described herein and which is covered by this policy is:

Fee Simple

2. Title to the estate or interest in the land is vested in:

Kristopher T Wieschhaus and Hillary M Wieschhaus, husband and wife as joint tenants

3. The land referred to in this policy is described as follows:

THAT PART OF THE EAST HALF OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP AND RANGE AFORESAID; THENCE WEST 23.05 CHAINS; THENCE NORTH 35°30' WEST 11.02 CHAINS TO THE CENTER LINE OF THE ORIGINAL BRISTOL AND OSWEGO ROAD; THENCE NORTH 34°59' WEST 2054.6 FEET; THENCE SOUTH 52°08' WEST 825.4 FEET; THENCE NORTH 38°06' WEST 2500.6 FEET TO THE NORTHERLY LINE OF THE KENNEDY FARM; THENCE NORTH 33°44' WEST ALONG SAID NORTHERLY LINE 254.4 FEET; THENCE SOUTH 84°37' WEST ALONG SAID NORTHERLY LINE 513.2 FEET; THENCE NORTH 80°53' WEST ALONG SAID NORTHERLY LINE 286.6 FEET; THENCE NORTH 45°39' WEST ALONG SAID NORTHERLY LINE 45.7 FEET; THENCE SOUTH 5°42' EAST 1401.55 FEET TO THE CENTERLINE OF KENNEDY ROAD; THENCE SOUTH 83°31'24" WEST ALONG SAID CENTERLINE 217.22 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 83°31'24" WEST ALONG SAID CENTERLINE 17.50 FEET THENCE NORTH 05°42'00" WEST 247.0 FEET; THENCE SOUTH 83°31'21" WEST 212.17 FEET TO THE LINE OF A FENCE; THENCE NORTH 05°56'56" WEST ALONG SAID FENCE LINE 1084.31 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 85°45'05" East ALONG SAID NORTHERLY LINE 44.75 FEET; THENCE NORTH 39°21'00" EAST ALONG SAID NORTHERLY LINE 269.09 FEET TO A DRAWN NORTH 05°42'00" WEST FROM THE POINT OF BEGINNING; THENCE SOUTH 05°42'00" EAST 1509.73 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART LYING NORTHERLY OF THE CENTERLINE OF BLACKBERRY CREEK IN BRISTOL TOWNSHIP, KENDALL COUNTY, ILLINOIS.

Issuing Agent:

Herbert & Eckburg, LLC



**First American Title Insurance Company
ALTA Owner's Policy
Schedule B**

File No. [REDACTED]

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

A. STANDARD EXCEPTIONS:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Easements, or claims of easements, not shown by the public records.
- (3) Encroachments, encumbrance, violation, variation or adverse circumstance affecting title that would be disclosed by an accurate survey pursuant to the "minimum Standards of Practice," 68 Ill. Admin Code, Sec. 1270.56(b)(6)(P) for residential property or the ALTA/NSPS land title survey standards for commercial/industrial property.
- (4) Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Taxes, or special assessments, if any, not shown as existing liens by the public records.
- (6) Loss or damage by reason of there being recorded in the public records, any deeds, mortgages, lis pendens, liens or other title encumbrances subsequent to the Commitment date and prior to the effective date of the final Policy.

B. SPECIAL EXCEPTIONS:

1. There are various ongoing closures and inaccessibility of certain records in counties and municipalities across the country due to the COVID-19 Emergency. If unable to record documents in the Public Records due to closure or inaccessibility, execution of a Declaration of Understanding and Indemnity and Hold Harmless Agreement Due to the COVID-19 Emergency is required by the parties (other than the Lender) to the contemplated transaction.
2. General taxes and assessments for the year 2nd of 2019, 2020 and subsequent years which are not yet due and payable.

Tax identification no.: 02-21-200-028

3. Rights of the Public, the State of Illinois and the Municipality in and to that part of the land, if any, taken or used for road purposes.
4. Rights of way for drainage tiles, ditches, feeders and laterals, if any.
5. Rights of the interested parties to the free and unobstructed flow of the waters of the stream which may flow on or through the land.
6. Rights of parties in possession in and to the land falling between the fence(s) location(s) and the property line(s) due to the failure of the fence(s) to follow the property line(s) as disclosed by survey presented at the closing.

NOTE: If any document referenced herein contains a covenant, condition or restriction violative of 42 USC 3604(c), such covenant, condition or restriction to the extent of such violation is hereby deleted.

End of Schedule B

Issuing Agent:


Herbert & Eckburg, LLC



ENDORSEMENT

ISSUED BY

First American Title Insurance Company

Attached to Policy No. 

THE STANDARD EXCEPTIONS 1, 4 THROUGH 6 ARE HEREBY DELETED.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

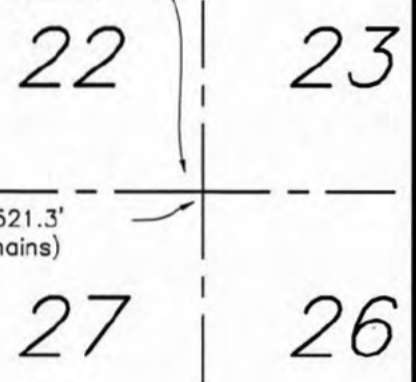
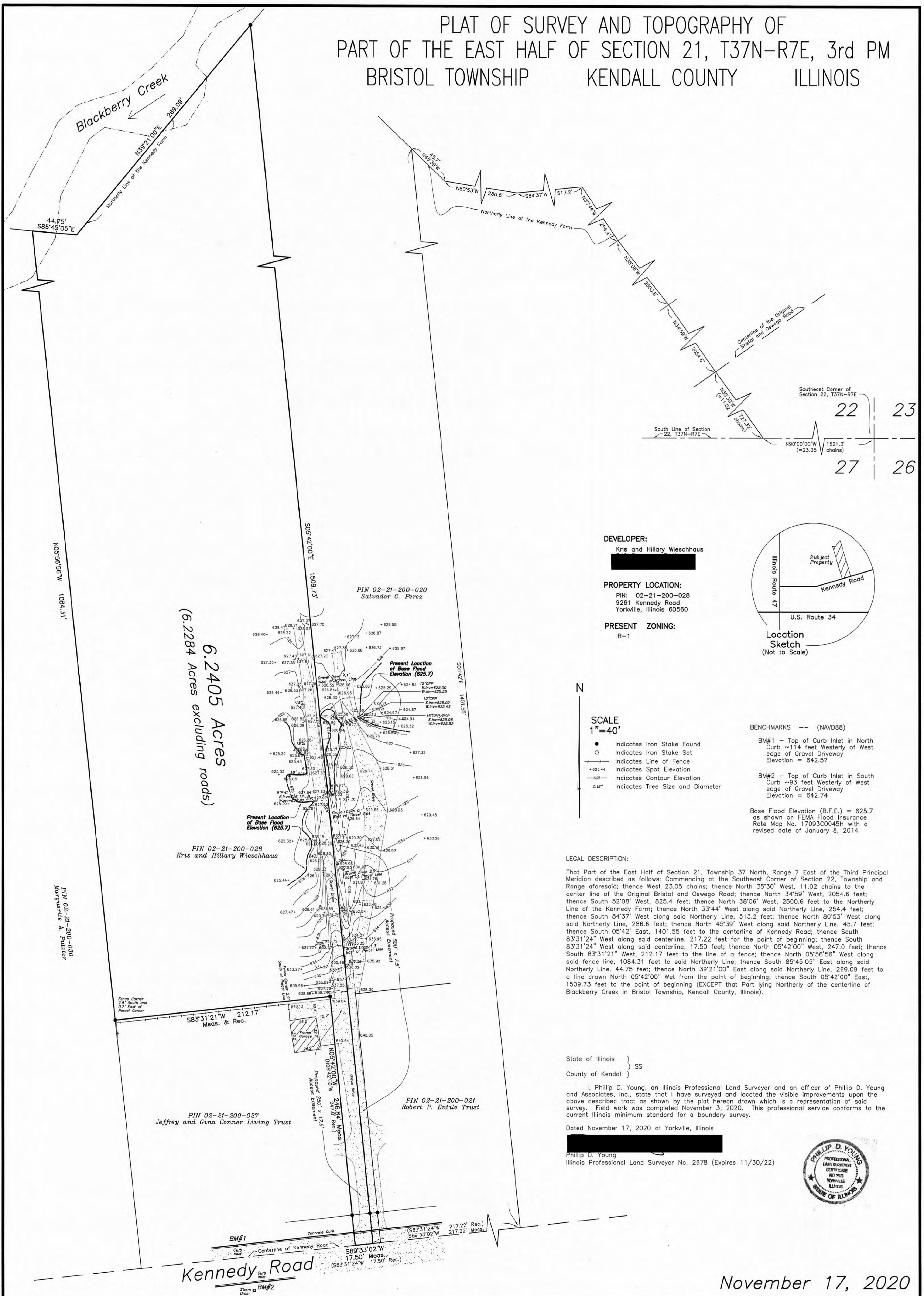
First American Title Insurance Company

Dated:



Christian Poulsen

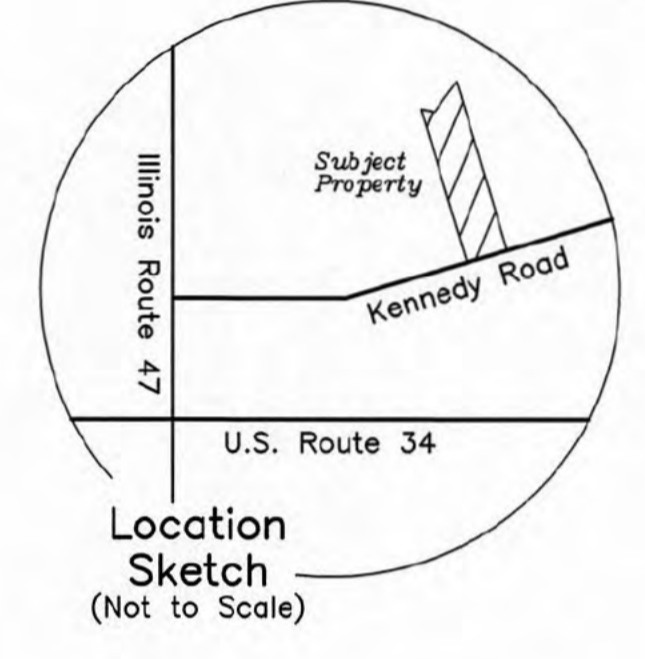
PLAT OF SURVEY AND TOPOGRAPHY OF PART OF THE EAST HALF OF SECTION 21, T37N-R7E, 3rd PM BRISTOL TOWNSHIP KENDALL COUNTY ILLINOIS



DEVELOPER:
Kris and Hillary Wieschhaus

PROPERTY LOCATION:
PIN: 02-21-200-028
9261 Kennedy Road
Yorkville, Illinois 60560

PRESENT ZONING:
R-1



- SCALE**
1" = 40'
- Indicates Iron Stake Found
 - Indicates Iron Stake Set
 - Indicates Line of Fence
 - Indicates Spot Elevation
 - Indicates Contour Elevation
 - ▲ Indicates Tree Size and Diameter

- BENCHMARKS** -- (NAVD88)
- BM#1 - Top of Curb Inlet in North Curb ~114 feet Westerly of West edge of Gravel Driveway Elevation = 642.57
 - BM#2 - Top of Curb Inlet in South Curb ~93 feet Westerly of West edge of Gravel Driveway Elevation = 642.74
- Base Flood Elevation (B.F.E.) = 625.7 as shown on FEMA Flood Insurance Rate Map No. 17093C0045H with a revised date of January 8, 2014

LEGAL DESCRIPTION:

That Part of the East Half of Section 21, Township 37 North, Range 7 East of the Third Principal Meridian described as follows: Commencing at the Southeast Corner of Section 22, Township and Range aforesaid; thence West 23.05 chains; thence North 35°30' West, 11.02 chains to the center line of the Original Bristol and Oswego Road; thence North 34°59' West, 2054.6 feet; thence South 52°08' West, 825.4 feet; thence North 38°06' West, 2500.6 feet to the Northerly Line of the Kennedy Farm; thence North 33°44' West along said Northerly Line, 254.4 feet; thence South 84°37' West along said Northerly Line, 513.2 feet; thence North 80°53' West along said Northerly Line, 286.6 feet; thence North 45°39' West along said Northerly Line, 45.7 feet; thence South 05°42' East, 1401.55 feet to the centerline of Kennedy Road; thence South 83°31'24" West along said centerline, 217.22 feet for the point of beginning; thence South 83°31'24" West along said centerline, 17.50 feet; thence North 05°42'00" West, 247.0 feet; thence South 83°31'21" West, 212.17 feet to the line of a fence; thence North 05°56'56" West along said fence line, 1084.31 feet to said Northerly Line; thence South 39°21'00" East along said Northerly Line, 269.09 feet to a line drawn North 05°42'00" West from the point of beginning; thence South 05°42'00" East, 1509.73 feet to the point of beginning (EXCEPT that Part lying Northerly of the centerline of Blackberry Creek in Bristol Township, Kendall County, Illinois).

State of Illinois)
County of Kendall) SS

I, Phillip D. Young, an Illinois Professional Land Surveyor and an officer of Phillip D. Young and Associates, Inc., state that I have surveyed and located the visible improvements upon the above described tract as shown by the plat hereon drawn which is a representation of said survey. Field work was completed November 3, 2020. This professional service conforms to the current Illinois minimum standard for a boundary survey.

Dated November 17, 2020 at Yorkville, Illinois

Phillip D. Young
Illinois Professional Land Surveyor No. 2678 (Expires 11/30/22)



November 17, 2020


JOB NO.	20287
JOB NAME	WIESCHHAUS
DWG FILE	20287
REVISION DATE	

Phillip D. Young and Associates, Inc.
LAND SURVEYING - TOPOGRAPHIC MAPPING - Lic.#184-002775


1107B South Bridge Street
Yorkville, Illinois 60560
Telephone (630)553-1580



November 18, 2020


 Kendall County Address Points

Parcels


 parcel

USA Flood Hazard Areas

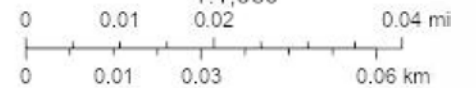
 1% Annual Chance Flood Hazard

 0.2% Annual Chance Flood Hazard

Incorporated Areas

 Yorkville

1:1,680



Map data © OpenStreetMap contributors, Map layer by Esri