

Recorded: 3/23/2017 at 7:36:11.800 AM  
Fee Amount: \$52.00  
Revenue Tax:  
Polk County, Iowa  
Julie M. Haggerty RECORDER  
Number: 201600078640  
BK: 16414 PG: 334

Prepared by: Shelby Wood, Spencer Fane LLP, 1000 Walnut, Ste. 1400, Kansas City, MO 64106 (816) 292-8357  
Return to: Shelby Wood, Spencer Fane LLP, 1000 Walnut, Ste. 1400, Kansas City, MO 64106

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### EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this "**Agreement**") is made effective this 20<sup>th</sup> day of March, 2017, by and between **WESTLAKE PROPERTIES, LLC**, a Montana limited liability company with offices for this transaction located at 4015 Ross Road, Ames, Iowa, 50014 ("**Grantor**") and **BATIS DEVELOPMENT COMPANY**, a Kansas corporation with offices for the transaction of business at 2933 SW Woodside Dr., Suite 200, Topeka, KS 66614 ("**Grantee**"). Grantor and Grantee shall sometime be referred to hereinafter collectively as "**Owners**", and individually as, the "**Owner**."

### RECITALS

- A. Grantor is the owner of Lots 4 & 5 in Parkview Boulevard Plat No. 1, an Official Plat of the Southeast Quarter of Section 14, Township 80 North, Range 24 West of the 5<sup>th</sup> P.M., Ankeny, Polk County, Iowa. Grantor's property shall hereinafter be referred to as "**Lots 4 & 5**" or "**Grantor Property**."
- B. Grantee is under contract with G-F Four Investments, Inc. to purchase Lot 3 in Parkview Boulevard Plat No. 1, an Official Plat of the Southeast Quarter of Section 14, Township 80 North, Range 24 West of the 5<sup>th</sup> P.M., Ankeny, Polk County, Iowa. Grantee's property shall hereinafter be referred to as "**Lot 3**" or "**Grantee Property**."
- C. Grantor Property and Grantee Property shall be referred to collectively hereinafter as the "**Property**."
- D. Parkview Boulevard Plat No. 1 was recorded as Document No. 015152230001, on June 25, 1984, in Book Y, Page 242 in the Polk County Recorder's Office ("**Plat**"), and is attached hereto as Exhibit A and incorporated herein by reference. This Plat references a 29 foot wide easement over and along the eastern boundary lines of Lots 3, 4, and 5 described in Paragraphs A and B (the "**Easement Area**").
- E. It is the intention and desire of the parties hereto, for the mutual considerations contained herein, to create easements for cross access, ingress, and egress, as set forth hereinafter, to and for the benefit of the Grantor Property and the Grantee Property, which easements are to be perpetual and run with the land.

## AGREEMENT

1. Cross Access Easement. Grantor hereby grants to Grantee, its employees, invitees, tenants, subtenants, concessionaires, licensees, customers, and agents (collectively, "**Grantee Owner**"), for the benefit of the Grantee Property, a perpetual, non-exclusive easement for free right of access, ingress, and egress for Permittees (defined below) and all vehicular and pedestrian traffic over and across the portion of the Easement Area located on the Grantor Property.

Grantee hereby grants to Grantor, its employees, invitees, tenants, subtenants, concessionaires, licensees, customers, and agents (collectively, "**Grantor Owner**"), for the benefit of the Grantor Property, a perpetual, non-exclusive easement for free right of access, ingress, and egress for Permittees and all vehicular and pedestrian traffic over and across the portion of the Easement Area located on the Grantee Property.

"**Permittees**" as used herein, shall mean the parties permitted by Grantor or Grantee or their respective successors in interest to enter upon their respective real property and to use the easements granted herein. Such term may include, without limitation, such parties' tenants, employees, agents, customers, guests, invitees and the customers, subtenants, concessionaires, employees, patrons and invitees of such tenant.

2. Closing Condition. This Agreement is conditioned upon the purchase of Lot 3 by Grantee from G-F Four Investments, Inc. on or before March 31, 2017. If Grantee does not purchase Lot 3 from G-F Four Investments on or before March 31, 2017, this Agreement shall be null and void.
3. No Use Restriction. By granting the forgoing easement rights, Grantor and Grantee in no way intend to limit each of their respective rights (or the rights of each of their respective successors and assigns) to use their respective Property.
4. Maintenance of Easement Area. Except as set forth in Paragraph 5 below, each Owner shall operate, maintain, replace and keep in good repair the portion of the Easement Area located on each Owner's respective Property, at its sole cost and expense, in a safe and good condition in compliance with applicable governmental laws, rules, regulations, orders and ordinances. Each Owner shall make a good faith effort to coordinate such

repair or maintenance activities with the other Owner, so as not to disturb the other Owner's use of their Property.

5. Repair of Existing Concrete. Grantee agrees to repair, at its sole expense, the patch of damaged concrete located on a portion of the Easement Area located on the Grantor Property ("**Repair Area**"), as shown on the diagram attached hereto as Exhibit B and incorporated herein by reference. Grantee is hereby granted access to the Grantor Property to complete the necessary repairs to the Repair Area and shall make a good faith effort to avoid disturbing Grantor's use of the Grantor Property during any such repair. Except as expressly provided in this paragraph, nothing shall limit the obligations of either party described in Paragraph 4 and Grantor and Grantee retain all maintenance, replacement, and repair obligations set forth in Paragraph 4 for their respective Property.
6. No Obstructions. Neither Grantor nor Grantee shall permit any barricade or other obstruction in or adjacent to any portion of the Easement Area located on their respective Property which would prohibit or adversely affect or impede the flow of vehicular or pedestrian traffic across, through, over or onto the portion of the Easement Area located on an Owner's Property.
7. Perpetual Easement. Each and every agreement, promise, restriction, benefit, undertaking, easement, right, privilege and restriction contained in this Agreement shall be appurtenant to and for the benefit of the Grantor Property and the Grantee Property, respectively; shall run with the land; shall be binding upon the parties to this Agreement, so long as each own a burdened parcel, upon the property to be burdened with the easements created hereby, and upon any successor to all or any part of the property to be burdened; and shall inure to the benefit of the property to be benefited and its owner, representatives, successors and assigns.
8. Insurance. As a condition hereof, each of Grantor and Grantee, on its own behalf and on behalf of its successors and assigns, including all successor owners of the Grantor Property and all successor owners the Grantee Property, hereby covenants and agrees to maintain at all times hereafter, comprehensive public liability insurance with responsible insurance companies licensed to do business in the State of Iowa, properly protecting their respective Property identified hereinabove in the amount of not less than Two Million Dollars (\$2,000,000.00) for injury or death of any one person, Two Million Dollars (\$2,000,000.00) for injury or death of any two or more persons arising out of any

one occurrence, and not less than Two Million Dollars (\$2,000,000.00) for property damage. Such insurance shall be primary with respect to the particular Owner's Property.

9. Notices. Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail (return receipt requested), postage and charges prepaid, or by Federal Express or other reputable overnight delivery service requiring a signature upon receipt, addressed as follows:

To Grantor: WESTLAKE PROPERTIES, LLC  
4015 Ross Road  
Ames, Iowa 50014  
Attention: Andrew Westlake

To Grantee: BATIS DEVELOPMENT COMPANY  
2933 SW Woodside Dr., Suite 200  
Topeka, Kansas 66614  
Attention: Mark Wittenburg

Any such notice shall be deemed to be given on the first date on which it is received or receipt thereof is refused. An Owner shall have the right to designate a different address by notice to the other parties similarly given at least ten (10) days before the effective date of such new notice address.

10. Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Property and shall benefit or be binding upon the successors and assigns of the respective Property, as applicable.
11. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind, or otherwise terminate this Agreement, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Agreement.
12. Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of

competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

13. Governing Law. This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Iowa.
14. Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.
15. Estoppel Certificate. Each Owner hereby severally covenants that within thirty (30) days of the written request of the other Owner it will issue to such other Owner or to any prospective mortgagee or purchaser of such Owner's Property an estoppel certificate stating: (a) whether the Owner to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (c) whether to the Owner's knowledge this Agreement as of that date is in full force and effect; and (d) facts, to the Owner's knowledge, in response to any other matter pertaining to this Agreement concerning which a request for information is reasonably made.
16. Termination of Agreement. This Agreement may be terminated by recording a release in recordable form executed by all the owners of the Grantor Property and of the Grantee Property.
17. Waiver of Default. No waiver of any default by any Owner shall be implied from any omission by any Owner to take any action in respect of such default if such default continues or is repeated. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent or similar acts or requests.

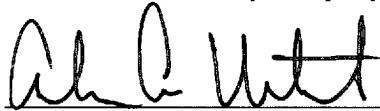
18. Indemnification. Each Owner agrees to indemnify, defend and hold all other Owners and their respective officers, directors, shareholders, partners, members, managers, affiliates, employees, representatives, agents, invitees, mortgagees, successors and assigns, harmless from and against any and all claims, actions, demands, damages, costs, liabilities, losses, judgments, or expenses of any kind or nature whatsoever (including, without limitation, reasonable attorney's fees) by reason of property damage, death or injury to persons arising from or relating to the indemnifying party's construction, reconstruction, removal, replacement, inspection, repair, or maintenance of or on the Easement Area.
19. Recitals. The Recitals set forth above are incorporated by reference in their entirety into this Agreement.
20. Modification. This Agreement may be amended or modified only by written consent of all owners of the Grantor Property and Grantee Property.
21. Legal Fees. In the event of any litigation or arbitration proceedings between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its legal fees and expenses, including attorney's fees and expenses and court costs, including any such costs incurred in connection with appeals, in connection with any such proceeding.
22. Recording. Immediately upon execution, Grantee shall record this Agreement in the Polk County Recorder's Office.
23. Exhibits. The following is attached to this Agreement.

Exhibit A – Plat Map  
Exhibit B – Repair Area Map

In WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly officers as of the date and year first above set forth.

**GRANTOR:**

**WESTLAKE PROPERTIES, LLC,**  
a Montana limited liability company

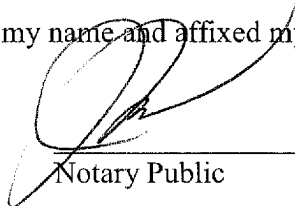
By:   
Name: Andrew Westlake  
Title: MEMBER/MANAGER

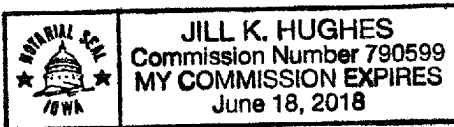
STATE OF Iowa )  
COUNTY OF Polk ) SS.

BE IT REMEMBERED that on this 16<sup>th</sup> day of February, 2016<sup>7</sup>, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Andrew Westlake, member of Westlake Properties, LLC, a Montana limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing as such officer, and duly acknowledged the execution of the same to be the act of that limited liability company on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

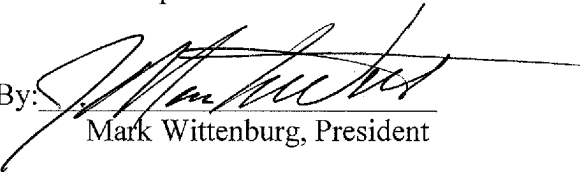
6.18.18  
My Commission Expires

  
Notary Public



**GRANTEE:**

**BATIS DEVELOPMENT COMPANY,**  
A Kansas corporation

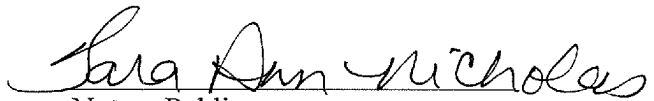
By:   
Mark Wittenburg, President

STATE OF Kansas )  
 ) SS.  
COUNTY OF Shawnee )

BE IT REMEMBERED that on this 17<sup>th</sup> day of February, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Mark Wittenburg, President of Batis Development Company, who is personally known to me to be the same person who executed the foregoing instrument of writing as such officer, and duly acknowledged the execution of the same to be the act of that company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

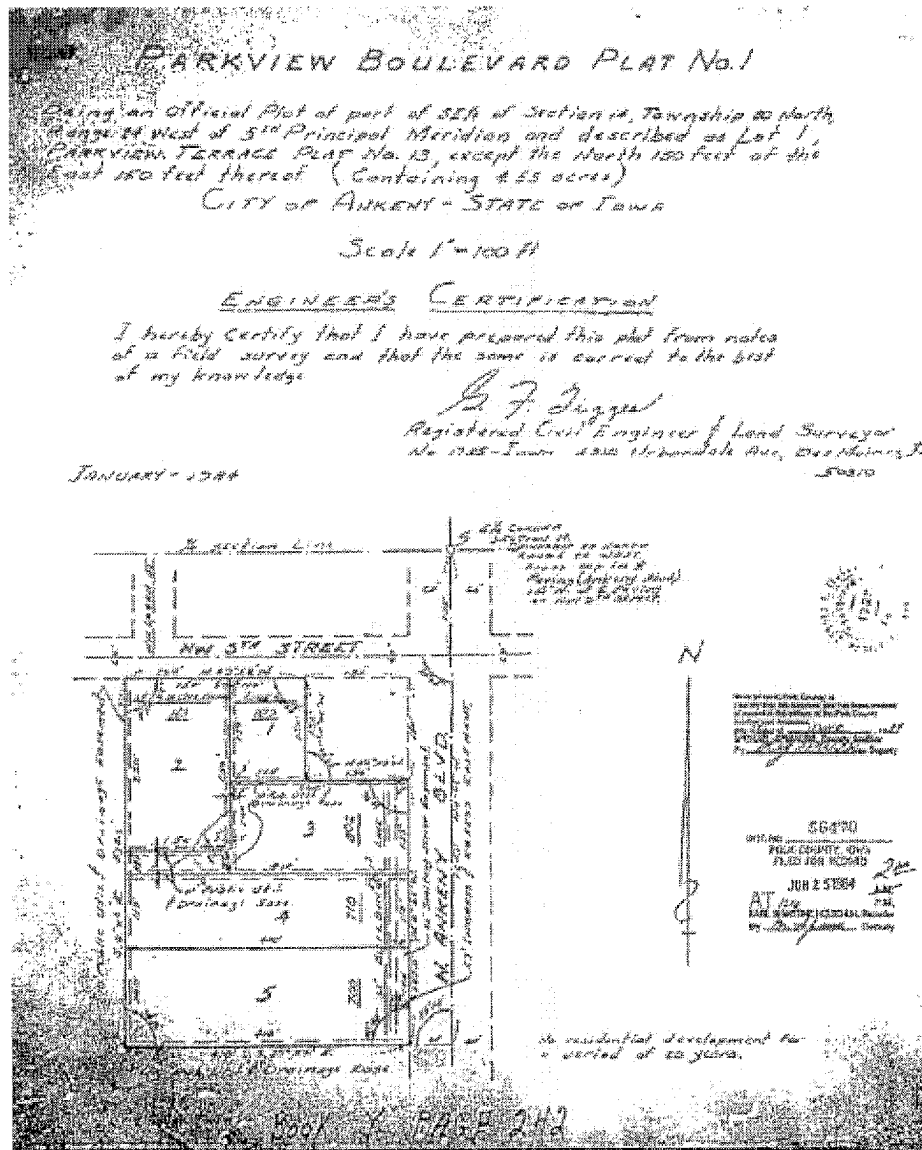
7-10-19  
My Commission Expires

  
Notary Public



Notary Public - State of Kansas  
TARA ANN NICHOLAS  
Commission Expires 7/10/19

# EXHIBIT A



**EXHIBIT B**

