

**Recorded: 4/30/2018 at 7:49:49.0 AM**  
**Fee Amount: \$52.00**  
**Revenue Tax:**  
**Polk County, Iowa**  
**Julie M. Haggerty RECORDER**  
**Number: 201700082795**  
**BK: 16899 PG: 859**

UPON RECORDING PLEASE  
RETURN TO:

**BATIS DEVELOPMENT COMPANY**

Attn: Mark Wittenburg  
2933 SW Woodside Dr., Suite 200  
Topeka, KS 66614

**EASEMENT AND MAINTENANCE AGREEMENT**

This EASEMENT AND MAINTENANCE AGREEMENT (this “**Agreement**”) is made effective this 24<sup>th</sup> day of April, 2018, by and between **WESTLAKE PROPERTIES, LLC**, a Montana limited liability company with offices for this transaction located at 4015 Ross Road, Ames, Iowa, 50014 (“**Westlake**”), **BATIS DEVELOPMENT COMPANY**, a Kansas corporation with offices for the transaction of business at 2933 SW Woodside Dr., Suite 200, Topeka, KS 66614 (“**Batis**”) and **MURRAY GROUP, LLC**, an Iowa limited liability company with offices located at 2401 SE Tones Drive, Suite 17, Ankeny, IA 50021 (“**Murray**”). Westlake, Batis and Murray shall sometime be referred to hereinafter collectively as “**Owners**”, and individually as, the “**Owner**.”

**RECITALS**

- A. Westlake 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. Westlake’s property shall hereinafter be referred to as the “**Westlake Property**.”
- B. Batis is the owner of 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. Batis’ property shall hereinafter be referred to as the “**Batis Property**.”
- C. Murray is the owner of that certain real property legally described as “A PART OF THE NORTH 150 FEET OF THE EAST 150 FEET OF LOT 1, PARKVIEW TERRACE PLAT 13, AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA”. Murray’s property shall hereinafter be referred to as the “**Murray Property**”.

- D. The Westlake Property, the Batis Property and the Murray Property shall each be a “**Property**” and collectively be referred to herein as the “**Properties**”.
- E. It is the intention and desire of the Owners, for the mutual considerations contained herein, to create easements for cross access, ingress, and egress in the “**Easement Area**” shown on Exhibit A attached hereto and incorporated herein, as set forth hereinafter, to and for the benefit of the Properties, which easements are to be perpetual and run with the land.

#### AGREEMENT

1. Recitals. The Recitals set forth above are hereby incorporated herein.
2. Cross Access Easement. Westlake hereby grants to Batis and Murray, their employees, invitees, tenants, subtenants, concessionaires, licensees, customers, and agents, for the benefit of the Batis Property and the Murray 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 Easement Area located on the Westlake Property.

Batis hereby grants Westlake and Murray, their employees, invitees, tenants, subtenants, concessionaires, licensees, customers, and agents, for the benefit of the Westlake Property and the Murray 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 Easement Area located on the Batis Property.

Murray hereby grants to Westlake and Batis, their employees, invitees, tenants, subtenants, concessionaires, licensees, customers, and agents, for the benefit of the Westlake Property and the Batis 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 Easement Area located on the Murray Property.

“**Permittees**” as used herein, shall mean the parties permitted by Westlake, Batis and Murray 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.

3. No Use Restriction. By granting the forgoing easement rights, the Owners 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. No Obstructions. No Owner 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.
6. 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 Properties, 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.
7. Insurance. Each Owner including all successor owners of the Properties, 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.
8. 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 Westlake:                   WESTLAKE PROPERTIES, LLC  
4015 Ross Road  
Ames, Iowa 50014  
Attention: Andrew Westlake

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

To Murray :

MURRAY GROUP, LLC  
2401 SE Tones Drive, Suite 17  
Ankeny, IA 50021  
Attn: Christian M. Murray

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.

9. Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Properties and shall benefit or be binding upon the successors and assigns of the respective Owners and Properties.
10. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle any Owner 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. Termination of Agreement. This Agreement may be terminated by recording a release in recordable form executed by all the owners of the Properties.
16. 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.

17. 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.
18. Recitals. The Recitals set forth above are incorporated by reference in their entirety into this Agreement.
19. Modification. This Agreement may be amended or modified only by written consent of all Owners of the Properties.
20. 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.
21. Recording. Immediately upon execution, Batis shall record this Agreement in the Polk County Recorder's Office.
22. Exhibits. The following is attached to this Agreement.

Exhibit A – Easement Area

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.

WESTLAKE:

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

By: [Signature]  
Name: Andrew Westlake  
Title: MEMBER

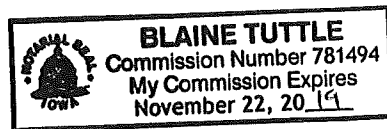
STATE OF IOWA )  
 ) SS.  
COUNTY OF Polk )

BE IT REMEMBERED that on this 18<sup>TH</sup> day of APRIL, 2018, 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.

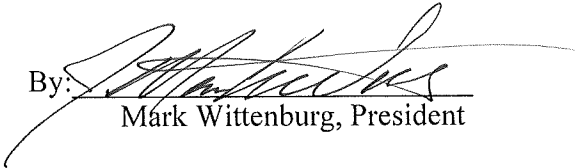
NOVEMBER 22, 2019  
My Commission Expires

[Signature]  
Notary Public



**BATIS:**

**BATIS DEVELOPMENT COMPANY,**  
a Kansas corporation


By:   
Mark Wittenburg, President

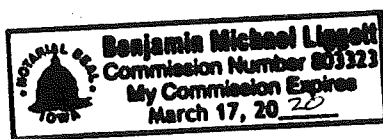
*Iowa*  
STATE OF ~~KANSAS~~ )  
*Polk* ) SS.  
COUNTY OF ~~SHAWNEE~~ )

BE IT REMEMBERED that on this 24<sup>th</sup> day of April, 2018, 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.

March 17<sup>th</sup>, 2020  
My Commission Expires

  
\_\_\_\_\_  
Notary Public



MURRAY:

MURRAY GROUP, LLC, an Iowa limited liability company

By: 

Name: Christian Murray


Title: Manager

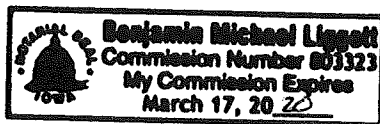
STATE OF Iowa )  
COUNTY OF Polk ) SS.

BE IT REMEMBERED that on this 18<sup>th</sup> day of April, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Christian Murray, Manager of Murray Group, LLC, an Iowa 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 company.

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

March 17<sup>th</sup>, 2020  
My Commission Expires

  
Notary Public





## **EXHIBIT A**

### **EASEMENT AREA**

#### **INGRESS/EGRESS EASEMENT DESCRIPTION:**

A PART OF THE NORTH 150 FEET OF THE EAST 150 FEET OF LOT 1, PARKVIEW TERRACE PLAT 13, AN OFFICIAL PLAT AND A PART OF LOT 3, LOT 4, & LOT 5 PARKVIEW BOULEVARD PLAT 1, AN OFFICIAL PLAT, ALL IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF SAID PARKVIEW BOULEVARD PLAT 1; THENCE SOUTH 89°46'28" EAST ALONG THE NORTH LINE OF SAID LOT 1, PARKVIEW TERRACE PLAT 13, A DISTANCE OF 73.38 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°46'28" EAST ALONG SAID NORTH LINE, 24.00 FEET, THENCE SOUTH 0°00'00" EAST, 2.00 FEET; THENCE SOUTH 54°53'23" EAST, 19.02 FEET; THENCE SOUTH 89°51'24" EAST, 32.44 FEET; THENCE SOUTH 0°00'00" EAST, 137.17 FEET TO THE NORTH LINE OF SAID LOT 3, PARKVIEW BOULEVARD PLAT 1; THENCE SOUTH 89°46'28" EAST ALONG SAID NORTH LINE OF LOT 3, A DISTANCE OF 4.36 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTH 0°00'00" EAST ALONG THE EAST LINE OF SAID LOT 3, LOT 4 AND LOT 5, A DISTANCE OF 389.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE NORTH 89°46'28" WEST ALONG THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 29.00 FEET; THENCE NORTH 0°00'00" WEST, 389.00 FEET TO SAID NORTH LINE OF LOT 3; THENCE SOUTH 89°46'28" EAST ALONG SAID NORTH LINE OF LOT 3, A DISTANCE OF 4.64 FEET; THENCE NORTH 00°00'00" WEST, 101.14 FEET; THENCE NORTH 44°55'42" WEST, 11.33 FEET; THENCE NORTH 89°51'24" WEST, 44.00 FEET; THENCE NORTH 00°00'00" WEST 40.94 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.37 ACRES (15,907 SQUARE FEET).

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