

**BK: 2018 PG: 929**  
**Recorded: 1/17/2018 at 3:44:13.0 PM**  
**Fee Amount: \$32.00**  
**Revenue Tax:**  
**Chad C. Airhart Recorder**  
**Dallas County, Iowa**

**LANDSCAPE BUFFER EASEMENT**

**Preparer Information:**

Lisa R. Wilson  
Wilson, Guerrero & Egge, P.C.  
475 Alice's Road, Suite A  
Waukee, Iowa 50263  
(515) 369-2502

**Return Document To:**

Michael C. Schilken  
Baird Holm, LLP  
1700 Farnam Street  
Suite 1500  
Omaha, Nebraska 68102

**Grantor:**

117 Land Company, L.L.C.

**Grantee:**

M.I.I.-Crescent Ridge, LLC

**Legal Description:**

See Exhibit A.

## **LANDSCAPE BUFFER EASEMENT**

### **KNOW TO ALL PERSONS BY THESE PRESENTS:**

1. Grant of Easement(s).

The undersigned, 117 LAND COMPANY, L.L.C., an Iowa limited liability company (hereinafter referred to as the "Grantor"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the M.I.I.-CRESCENT RIDGE, LLC, a Nebraska limited liability company (hereinafter referred to as "the Grantee"), perpetual easement for a landscape buffer area over, under, through and across the following described real estate the real property legally described as:

SEE EXHIBIT "A" ATTACHED HERETO

(hereinafter referred to as the "Easement Area")

2. Use and Purpose of Easement(s).

This Easement shall be granted for the purpose of locating and maintaining a landscape buffer area and which permits and allows the Grantee to enter at any time upon and into said Easement Area as described herein, to maintain said Easement Area and to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair and to forever maintain said Easement Area whenever necessary. No structure or building of any kind whatsoever shall be erected upon the said Easement Area without the express written consent of the Grantee.

3. Maintenance.

Grantee, at its sole cost and expense, shall keep and maintain the grading and elevations of said Easement(s), and any other repairs or maintenance that may be necessary, including the installation, maintenance, and/or replacement of any landscape plantings, ground cover, irrigation, landscape materials or related equipment/improvements in substantial compliance with any buffer landscaping plan approved by Grantor and the City of Waukee, Iowa in connection with Grantee's use of its property, general landscape maintenance of trees and shrubs, control of weed growth and/or preventative pesticides to control infestation of weeds and insects and general policing of the Easement Area to maintain the Easement Area in good condition, free from weeds, debris and trash. All ground cover shall be in the form of sod and seeding is strictly prohibited. Grantee's landscape plan, and any subsequent material revision thereto, shall be approved, in writing, by Grantor prior to any installation or replacement of landscaping in the Easement Area.

The Grantor shall not be responsible whatsoever for any maintenance or upkeep of the land, plantings, irrigation, equipment, improvements or landscaping materials located within the Easement Area, including but not limited to maintaining the grade and elevation thereof. Said responsibility to keep and maintain the Easement Area in good repair, maintenance and condition shall rest solely with the Grantee, at the Grantee's expense. If the Grantor deems it necessary to protect and preserve the Easement Area, Grantor shall provide Grantee with written notice of default and thirty (30) day opportunity to cure.

In the event Grantee fails to cure said default after expiration of the cure period, the Grantor may perform maintenance of the Easement Area, at Grantee's expense, which expense shall be promptly reimbursed to Grantor upon Grantor's invoice therefor.

In the event any damage to the Easement Area results from the negligent or intentional acts or omissions of the Grantor, Grantor shall be responsible for repairing the damage at its expense. If Grantor fails to repair any such damage, Grantee shall provide Grantor with written notice of default and thirty (30) day opportunity to cure. In the event Grantor fails to cure said default after expiration of the cure period, the Grantee may repair the damage to the Easement Area, at Grantor's expense, which expense shall be promptly reimbursed to Grantee upon Grantee's invoice therefor.

4. Right of Access.

The Grantee shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to repair, or reconstruct the landscape buffer area and remove any unauthorized obstructions or structures placed or erected in the Easement Area.

5. Hold Harmless.

The Grantee, its successors and assigns, agrees to indemnify and hold harmless the Grantor, its members, managers, principals, employees, officers, agents, representatives, contractors, attorneys and insurers from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantee arising out of or in connection with any undertaking arising out of or otherwise related to this Easement. Except for the negligent or intentional acts or omissions of the Grantee, or Grantee's performance of (or failure to perform) any of Grantee's obligations set forth herein, the Grantor, its successors and assigns, agrees to indemnify and hold harmless the Grantor, its members, managers, principals, employees, officers, agents, representatives, contractors, attorneys and insurers from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

6. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the Grantor including, but not limited to, future owners, developers, lessees or occupants. All provisions of this instrument including benefits and burdens, run with the land are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

7. Jurisdiction and Venue.

The Grantee and Grantor agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the party being in Dallas County, Iowa.

8. Words and Phrases.

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

9. Attorney's Fees.

The Grantor may enforce this instrument by appropriate action, and should it prevail in such litigation, it shall recover as part of its costs the reasonable attorney's fees incurred in such litigation.

10. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

11. Paragraph Headings.

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

Grantor does HEREBY COVENANT with the Grantee that (i) Grantor holds said real estate described in this Easement by title in fee simple; (ii) that Grantor has good and lawful authority to convey the same; and (iii) said Grantor covenants to WARRANT AND DEFEND the Easement Area against the claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 11 day of January, 2018.

117 LAND COMPANY, L.L.C.

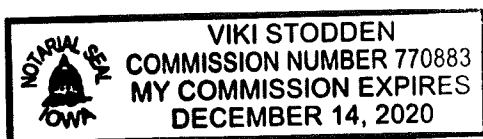
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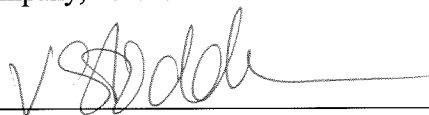


Toby T. Torstenson, Manager

STATE OF IOWA            )  
                                      ) SS  
COUNTY OF POIK    )

This instrument was acknowledged before me on this 11 day of January, 2018, by Toby T. Torstenson, Manager of 117 Land Company, L.L.C.

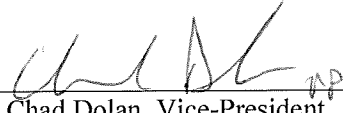


  
\_\_\_\_\_  
Notary Public in and for the State of Iowa

**Consent by Lienholder**


The undersigned, being a lienholder to the property to be encumbered by the foregoing easement pursuant to that certain Mortgage filed March 21, 2017 in Book 2017, Page 489, in the land records of the Dallas County, Iowa, Recorder, does hereby consent to the conveyance of the foregoing easement.

IOWA TRUST & SAVINGS BANK

By:   
Chad Dolan, Vice-President

State of Iowa                    )  
County of Dallas            ) ss:

This instrument was acknowledged before me on this 11<sup>th</sup> day of January, 2018, by Chad Dolan, Vice-President of Iowa Trust & Savings Bank.

  
Notary Public in the State of Iowa  
My commission expires: 9-1-20

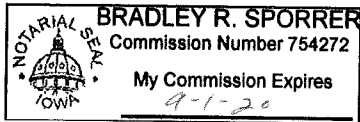


EXHIBIT "A"

The West 15.00 feet of Lot 1 in I-80 West Industrial Park Plat 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa, and containing 0.11 acres (4,677 S.F.)