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Kind: EASEMENT
Recorded: 08/11/2011 at 11:29:49 AM
Fee Amt: \$47.00 Page 1 of 9
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2012-00010900

BK **13937** PG **824-832**

Stacey C. Rogers AT0010765
Preparer Information: Stacey C. Rogers, 210 N.E. Delaware Avenue, Suite 200, Ankeny, Iowa 50021; (515) 964-8777
After Filing Return To: Stacey C. Rogers, 210 N.E. Delaware Avenue, Suite 200, Ankeny, Iowa 50021
~~RETURN TO~~

TEMPORARY GRADING EASEMENT AGREEMENT

29th This Temporary Grading Easement Agreement ("Agreement") is made and entered the day of July, 2011, by and between **Altoona Development, L.L.C.** ("Grantor"), as owner of the real estate legally described in paragraph "A", below, and **Meadow Vista Parkside, L.L.C.**, an Iowa Limited Liability Company, as owner of Lots 1-59 in Meadow Vista South, an Official Plat, now in and forming a part of the City of Altoona, Polk County, Iowa, and **Meadow Vista Senior Villas, L.L.C.**, an Iowa Limited Liability Company, as owner of Lot 60 in Meadow Vista South, an Official Plat, now in and forming a part of the City of Altoona, Polk County, Iowa, (together "Grantees"), as owner of All Lots in Meadow Vista South, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

RECITALS:

A. Grantor is the owner of the following described real estate (the "Grantor Real Estate"):

A PART OF PARCEL 'F' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 8388, PAGE 600 IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF ALTOONA, POLK COUNTY, IOWA, EXCEPT THAT PORTION PLATTED AS BROOKFIELD ESTATES PLAT 1, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF ALTOONA, POLK COUNTY, IOWA, AND EXCEPT THAT PORTION PLATTED AS MEADOW VISTA SOUTH, AN OFFICIAL PLAT, NOW IN AND FORMING A PART OF THE CITY OF ALTOONA, POLK COUNTY IOWA

B. Grantees are the owners of the following described real estate (the "Grantee Real Estate"):

Lots 1-60 in Meadow Vista South, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

C. Grantee desires to obtain a Temporary Grading Easement from Grantor across a portion of the Grantor Real Estate (as shown in attached Exhibits "A" and "A-1") to enable Grantee to both conduct grading operations and to dispose of excess soil from grading at Meadow Vista South, and Grantor is willing to grant a Temporary Grading Easement to Grantee, all in accordance with the terms and conditions of this Agreement.

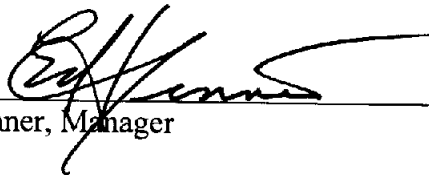
1. **Grant of Grading Easement.** Grantor hereby grants and conveys unto Grantees, and their successors and assigns, a temporary grading easement with the right to erect, construct, install, and lay approximately 32,000 cubic feet of soil thereto, under, over and across the real estate as shown in the grading plan attached hereto as Exhibit "B" and an adjacent area to the north of the fill area shown on Exhibit A (the "Easement Area"), for the purposes of grading and placement of excess soil from Meadow Vista South. Grantee shall be responsible for all erosion control and compliance matters during its use of the Easement Area.
2. **Treatment of Top Soil.** Top soil will be stripped from the fill area and piled in the adjacent area to the north of the fill area where it will remain while Grantees conduct grading activities. When Grantees have finished placing excess dirt in the fill area, Grantees will spread the removed top soil over the fill area to the extent possible, making no warranties as to depth or adequacy of coverage and with no obligation to acquire additional top soil to reach a particular depth or extent of coverage.
3. **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, including but not limited to, the right to remove any unauthorized fences, structures, obstruction, planting or material placed or erected under, over, on, through, across or within the Easement Area.
4. **Indemnification.** Grantees agree to indemnify and hold harmless Grantor and its employees, agents, representatives and attorneys from and against any and all claims or demands for liabilities, losses, damages, costs and expenses (including attorneys' fees) arising from or related to (i) acts or omissions of Grantees, their agents, representatives, employees, contractors and subcontractors in connection with the use by Grantee of the Easement Area or (ii) the failure by Grantee to perform its obligations hereunder, except that: Grantees shall not be held responsible whatsoever for any damage to the crops within the Easement Area caused by Grantees' permissible activities within the Easement Area, and the responsibility for said crops shall remain with the Grantor, its grantees, assigns or transferees.
5. **Successors and Assigns.** The terms and conditions of this Agreement are binding upon Grantor and Grantees and their respective successors and assigns. All of the provisions of this Agreement, including the benefits and burdens, run with the land

and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

- 6. **Consent and Subordination of Mortgage Holder.** Valley Bank is the holder of an Open End Real Estate Mortgage dated July 6, 2004 and filed on July 6, 2004 in the office of the Polk County Recorder at Book 10628, Page 862. By signing this Agreement, Valley Bank, its successors and assigns consents to the terms of this easement agreement and hereby subordinates its interest in the Easement Area to the interest of the City and its successors and assigns.

IN WITNESS WHEREOF, Grantor and Grantees have duly executed this Agreement as of the date first above written.

Grantor:
Altoona Development, L.L.C.

By: 
Ed Skinner, Manager

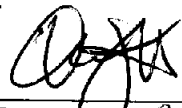
Grantees:
MEADOW VISTA PARKSIDE, LLC
an Iowa limited liability company

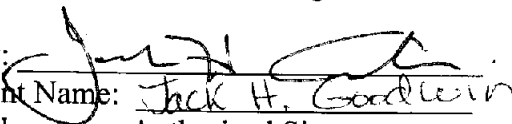
By: MV Meadow Vista Parkside LLC
an Ohio limited liability company


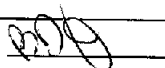
Its: Member

By: Miller-Valentine Apartments III LLC
an Ohio limited liability company

Its: Sole Member

By: 
Print Name: David R. Liette
Title: Authorized Signer

By: 
Print Name: Jack H. Goodwin
Title: Authorized Signer

Content Approved by: 
Signature Block Approved by: 

Signature Page to Temporary Grading Easement Agreement

AND

MEADOW VISTA SENIOR VILLAS, LLC

an Iowa limited liability company

By: MV Meadow Vista Senior Villas LLC
an Ohio limited liability company

Its: Member

By: Miller-Valentine Apartments III LLC
an Ohio limited liability company

Its: Sole Member

By: [Signature]
Print Name: DAVID R. LICHE
Title: Authorized Signer

By: [Signature]
Print Name: JACK H. GOODWIN
Title: Authorized Signer

Content Approved by: [Signature]

Signature Block Approved by: [Signature]

STATE OF IOWA)
) ss:
COUNTY OF POLK)

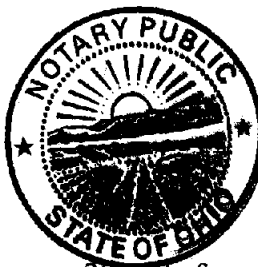
On this 29th day of July, 2011, before me, a Notary Public in and for the said State, personally appeared Ed Skinner, to me personally known, who being by me duly sworn did say that he is the Manager of said limited liability company, that no seal has been procured by the said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its manager and the said Manager acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



[Signature]
Notary Public in and for said State

STATE OF Ohio)
COUNTY OF Warren)

SS:



BRENDA D. JACQUES
Notary Public, State of Ohio
My Commission Expires
March 31, 2014

On this 19th day of July, 2011, before me, a Notary Public in and for the said State, personally appeared David R. Lette and Jack H. Goodwin, to me personally known, who being by me duly sworn did say that they are the Authorized Signers of Miller-Valentine Apartments III, L.L.C., an Ohio Limited Liability Company, that Miller-Valentine Apartments III, L.L.C. is the Sole Member of MV Meadow Vista Parkside L.L.C., an Ohio Limited Liability Company, that MV Meadow Vista Parkside L.L.C. is a Member of **MEADOW VISTA PARKSIDE, LLC**, an Iowa Limited Liability Company, that no seal has been procured by any of the said limited liability companies and that this instrument was signed on behalf of the said limited liability companies by authority of their members and managers and the said limited liability company acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it and by them voluntarily executed.

Brenda D. Jacques
Notary Public in and for said State

STATE OF Ohio)
COUNTY OF Warren)

SS:



BRENDA D. JACQUES
Notary Public, State of Ohio
My Commission Expires
March 31, 2014

On this 19th day of July, before me, a Notary Public in and for the said State, personally appeared David R. Lette and Jack H. Goodwin, to me personally known, who being by me duly sworn did say that they are the Authorized Signers of Miller-Valentine Apartments III, L.L.C., an Ohio Limited Liability Company, that Miller-Valentine Apartments III, L.L.C. is the Sole Member of MV Meadow Vista Senior Villas L.L.C., an Ohio Limited Liability Company, that MV Meadow Vista Senior Villas L.L.C. is a Member of **MEADOW VISTA SENIOR VILLAS, LLC**, an Iowa Limited Liability Company, that no seal has been procured by any of the said limited liability companies and that this instrument was signed on behalf of the said limited liability companies by authority of their members and managers and the said limited liability company acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it and by them voluntarily executed.

Brenda D. Jacques
Notary Public in and for said State

CONSENT BY MORTGAGEE

COMES NOW the undersigned, Valley Bank, which is the mortgagee regarding the real estate described in the foregoing Temporary Grading Easement Agreement, and hereby consents to said Temporary Grading Easement Agreement. Any enforcement action by Valley Bank, as mortgagee, shall in no way extinguish said Temporary Grading Easement Agreement. The Open End Real Estate Mortgage held by Valley Bank, dated July 6, 2004 was filed on July 6, 2004 in the office of the Polk County Recorder at Book 10628, Page 862.

VALLEY BANK

By *Dennis H. Hanson* Reg. Pres.
Dennis H. Hanson, Regional President

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 29th day of July, 2011, before me, the undersigned a Notary Public in and for the State of Iowa, personally appeared, Dennis H. Hanson, to me personally known, who being by me duly sworn, did say that he is the Regional President of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Dennis H. Hanson, as officer, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.



James M. Gocke
Notary Public in and for the State of Iowa

RETURN TO: CIVIL DESIGN ADVANTAGE, 3405 SE CROSSROADS DRIVE, SUITE G, GRIMES, IA. 50111, PH: 369-4400 FAX: 369-4410

EASEMENT PLAT

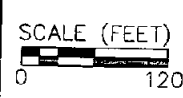
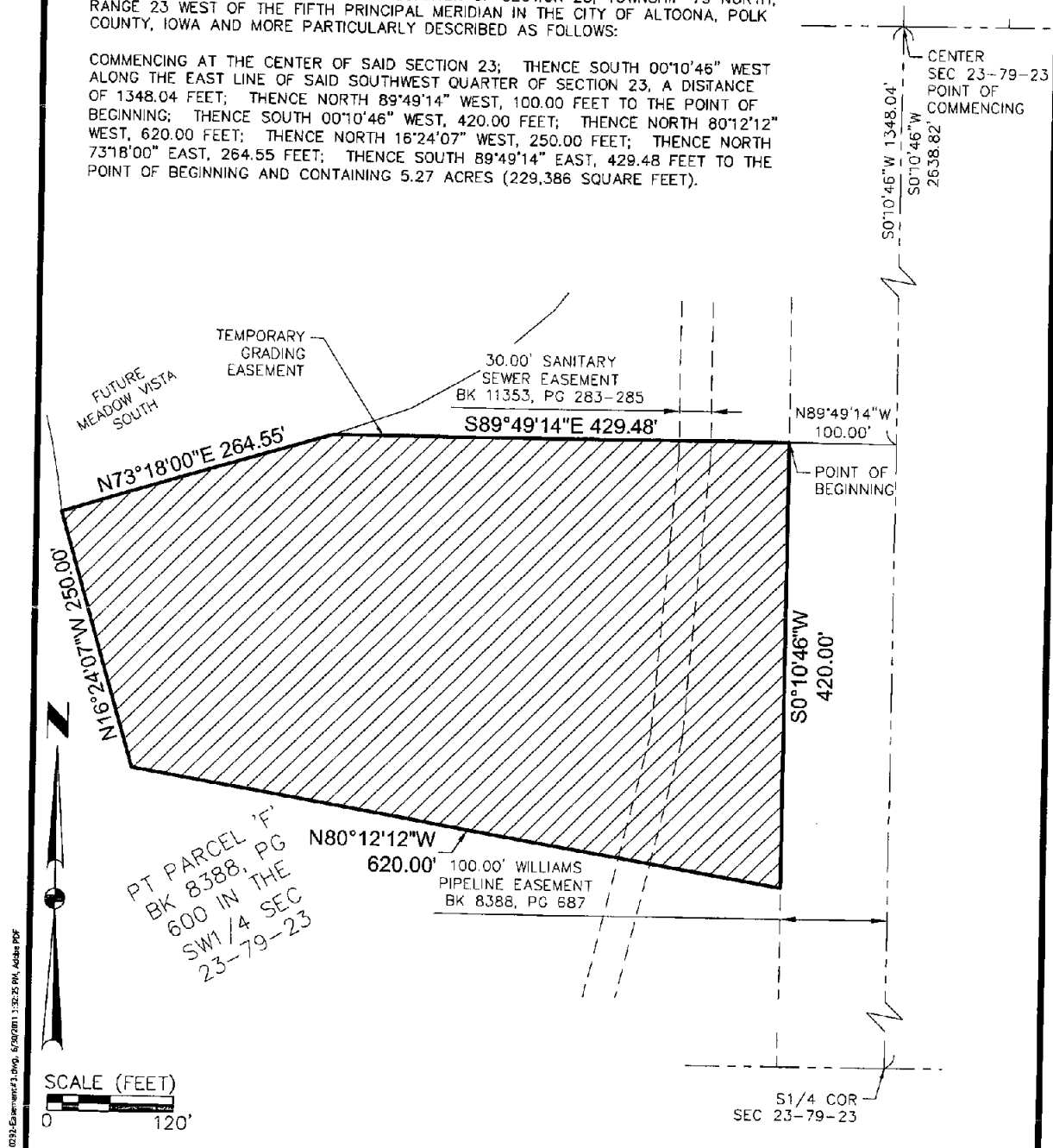
OWNER

ALTOONA DEVELOPMENT LLC
 204 8TH STREET SE
 ALTOONA, IOWA 50009

TEMPORARY GRADING EASEMENT DESCRIPTION:

A PART OF PARCEL 'F' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 8388, PAGE 600 IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 23; THENCE SOUTH 00°10'46" WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 23, A DISTANCE OF 1348.04 FEET; THENCE NORTH 89°49'14" WEST, 100.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°10'46" WEST, 420.00 FEET; THENCE NORTH 80°12'12" WEST, 620.00 FEET; THENCE NORTH 16°24'07" WEST, 250.00 FEET; THENCE NORTH 73°18'00" EAST, 264.55 FEET; THENCE SOUTH 89°49'14" EAST, 429.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.27 ACRES (229,386 SQUARE FEET).



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1 1 1010.292	PT PARCEL F - SW1/4 SEC 23-79-23 EASEMENT PLAT	 CIVIL DESIGN ADVANTAGE ENGINEER:	3405 SE CROSSROADS DRIVE, SUITE G GRIMES, IOWA 50111 PH: (515) 369-4400 Fax: (515) 369-4410
	ALTOONA, IOWA		TECH:

PARCEL 'F' - SW1/4 SEC 23-79-23
OFF-SITE GRADING EASEMENT DESCRIPTION

A PART OF PARCEL 'F' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 8388, PAGE 600 IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 23; THENCE SOUTH 00°10'46" WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 23, A DISTANCE OF 1348.04 FEET; THENCE NORTH 89°49'14" WEST, 100.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°10'46" WEST, 420.00 FEET; THENCE NORTH 80°12'12" WEST, 620.00 FEET; THENCE NORTH 16°24'07" WEST, 250.00 FEET; THENCE NORTH 73°18'00" EAST, 264.55 FEET; THENCE SOUTH 89°49'14" EAST, 429.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.27 ACRES (229,386 SQUARE FEET).

