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CHS



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Fee Amt: \$37.00 Page 1 of 6  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2012-00010888

BK 13937 PG 754-759

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:

**TRAIL EASEMENT**

**KNOW ALL PERSONS BY THESE PRESENTS** that the undersigned property owner (hereinafter called "Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey unto the **CITY OF ALTOONA, IOWA**, a municipal corporation (hereinafter called "City"), a perpetual easement and right-of-way under, over, on, through, across and within the following described real estate:

A PART OF LOT 60, MEADOW VISTA SOUTH, AN OFFICIAL PLAT IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 60; THENCE NORTH 00°04'18" WEST ALONG THE WEST LINE OF SAID LOT 60, 11.55 FEET; THENCE SOUTH 60°00'54" EAST, 66.33 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 240.00 FEET, WHOSE ARC LENGTH IS 140.26 FEET AND WHOSE CHORD BEARS NORTH 1°16'50" EAST, 138.27 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE EASTERLY WHOSE RADIUS IS 610.00 FEET, WHOSE ARC LENGTH IS 280.68 FEET AND WHOSE CHORD BEARS NORTH 2°16'46" WEST, 278.21 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 590.00 FEET, WHOSE ARC LENGTH IS 234.43 FEET AND WHOSE CHORD BEARS NORTH 00°28'50" WEST, 232.89 FEET TO THE NORTH LINE OF SAID LOT 60; THENCE NORTH 89°46'49" EAST ALONG SAID NORTH LINE, 20.41 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 610.00 FEET, WHOSE ARC LENGTH IS 238.26 FEET AND WHOSE CHORD BEARS SOUTH 00°17'14" EAST, 236.75 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE EASTERLY WHOSE RADIUS IS 590.00 FEET, WHOSE ARC LENGTH IS 271.48 FEET AND WHOSE CHORD BEARS

SOUTH 2°16'46" EAST, 269.09 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE WESTERLY WHOSE RADIUS IS 260.00 FEET, WHOSE ARC LENGTH IS 156.18 FEET AND WHOSE CHORD BEARS SOUTH 1°44'48" WEST, 153.84 FEET; THENCE SOUTH 60°00'54" EAST, 226.01 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 835.00 FEET, WHOSE ARC LENGTH IS 94.43 FEET AND WHOSE CHORD BEARS SOUTH 56°46'31" EAST, 94.38 FEET TO THE SOUTHERLY LINE OF SAID LOT 60; THENCE WESTERLY ALONG SAID SOUTHERLY LINE AND A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 25.00 FEET, WHOSE ARC LENGTH IS 22.89 FEET AND WHOSE CHORD BEARS NORTH 81°07'20" WEST, 22.10 FEET; THENCE NORTHWESTERLY ALONG SAID SOUTHERLY LINE AND A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 825.00 FEET, WHOSE ARC LENGTH IS 73.71 FEET AND WHOSE CHORD BEARS NORTH 57°27'19" WEST, 73.69 FEET; THENCE NORTH 60°00'54" WEST ALONG SAID SOUTHERLY LINE, 306.96 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.39 ACRES (17,191 SQUARE FEET)

AND

A PART OF OUTLOT 'Z', MEADOW VISTA SOUTH, AN OFFICIAL PLAT IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERN MOST CORNER OF SAID OUTLOT 'Z'; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID OUTLOT 'Z' AND A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 825.00 FEET, WHOSE ARC LENGTH IS 264.00 FEET AND WHOSE CHORD BEARS NORTH 38°18'30" WEST, 262.88 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY WHOSE RADIUS IS 25.00 FEET, WHOSE ARC LENGTH IS 22.89 FEET AND WHOSE CHORD BEARS NORTH 21°14'57" WEST, 22.10 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 835.00 FEET, WHOSE ARC LENGTH IS 278.98 FEET AND WHOSE CHORD BEARS SOUTH 39°15'52" EAST, 277.68 FEET; THENCE SOUTH 11°58'04" EAST, 10.03 FEET TO THE SOUTHEASTERLY LINE OF SAID OUTLOT 'Z'; THENCE SOUTH 73°18'00" WEST ALONG SAID SOUTHEASTERLY LINE, 7.17 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.06 ACRES (2,790 SQUARE FEET)

AND

THE SOUTHWESTERLY 7.00 FEET OF LOTS 46 AND 47 MEASURED PARALLEL WITH THE CENTERLINE OF RUTHERFORD DRIVE SW, MEADOW VISTA SOUTH, AN

OFFICIAL PLAT IN THE CITY OF ALTOONA, POLK COUNTY,  
IOWA

(hereinafter called "Easement Area"), for the purpose of the City constructing, reconstructing, repairing, replacing, enlarging, inspecting and maintaining a trail for bicyclists and other pedestrian uses, together with all necessary structures and appurtenances thereto, under, over, on, through, across and within said Easement Area.

This Easement shall be subject to the following terms and conditions:

1. **ERECTION AND PLACEMENT OF STRUCTURES, OBSTRUCTIONS, PLANTINGS OR MATERIALS PROHIBITED.** Grantor and its grantees, assigns and transferees shall not erect any fence or other structure under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the City, nor shall Grantor cause or permit any obstruction, planting or material to be placed under, over, on, through across or within the Easement Area without obtaining the prior written consent of the City.
2. **CHANGE OF GRADE PROHIBITED.** Grantor and its grantees, assigns and transferees shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City. The City shall have the right to restore any changes in grade, elevation or contour without prior written consent of the Grantor, its grantees, assigns or transferees.
3. **RIGHT OF ACCESS.** The City 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 from property adjacent thereto as herein described, 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. **MAINTENANCE.** The City shall be responsible for any maintenance of the land located within the Easement Area whatsoever and that responsibility shall remain with The City, its grantees, assigns or transferees.
5. **PROPERTY TO BE RESTORED.** The City shall restore the Easement Area after exercising its rights hereunder, provided, however, that the City's duty of restoration shall be limited to grading and replacing grass, sod or any other ground cover (but not including any structures, trees or shrubs). The City shall be responsible for any construction, reconstruction, replacement, repair or maintenance of any improvements located within the Easement Area.
6. **LIABILITY.** Except as may be caused by the negligent acts or omissions of the City, its employees, agents or its representatives, the City shall not be liable for injury or property damage occurring in or to the Easement Area, the property abutting said Easement Area, nor for property damage to any improvements or obstructions thereon resulting from the City's exercise of this Easement. Grantor

agrees to indemnify and hold City, its employees, agents and representatives harmless against any loss, damage, injury or any claim or lawsuit for loss, damage or injury arising out of or resulting from the negligent or intentional acts or omissions of Grantor or its employees, agents or representatives.

- 7. **EASEMENT BENEFIT.** This Easement shall be for the benefit of the City, its successors and assigns, and its permittees and licensees.
- 8. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed perpetual and to run with the land and shall be binding on Grantor and on Grantor's heirs, successors and assigns.
- 9. **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.
- 10. **APPROVAL BY CITY COUNCIL.** This Easement shall not be binding until it has received the final approval and acceptance by the City Council by Resolution which approval and acceptance shall be noted on this Easement by the City Clerk.

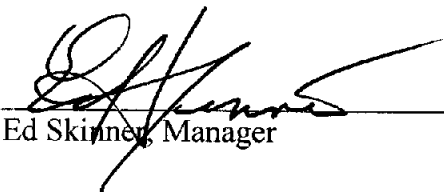
Grantor does HEREBY COVENANT with the City that (i) Grantor holds said real estate described in this Easement by title in fee simple; (ii) that Grantor has good and lawful authority to convey the same; and (iii) said Grantor covenants to WARRANT AND DEFEND the said premises against the claims of all 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 5th day of July, 2011.

Altoona Development, L.L.C. an Iowa  
Limited Liability Company, Grantor

By:   
Ed Skinner, Manager

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this 5<sup>th</sup> 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.



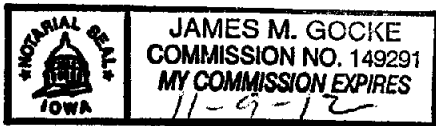
[Signature]  
Notary Public in and for said State

Consented to by Valley Bank

By: [Signature]  
Dennis H. Hanson, Regional President

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this 5<sup>th</sup> 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.



[Signature]  
Notary Public in and for the State of Iowa

ACCEPTANCE BY CITY

STATE OF IOWA            )  
                                  ) ss:  
COUNTY OF POLK        )

I, Randy Pierce, City Clerk of the City of Altoona, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Altoona by Resolution No. 7-5-2011 #1, passed on the 5<sup>th</sup> day of July, 2011, and this certificate is made pursuant to authority contained in said Resolution.

Signed this 1<sup>st</sup> day of August, 2011.

Randy Pierce  
City Clerk of Altoona, Iowa

