

IT
S

Inst # 2007025723 Thu May 24 15:33:11 CDT 2007
Filing Fee: \$40.50
Lancaster County, NE Assessor/Register of Deeds Office EASE
Pages 8



JOINT EASEMENT AND TRAIL USE AGREEMENT

This Joint Easement and Trail Use Agreement is made this 16 day of May, 2007, by and between Wilderness View Townhomes, L.L.C., a Nebraska limited liability company ("Wilderness") and Timberland Nebraska I, LLP, a Minnesota limited liability partnership ("Timberland").

RECITALS

- A. Wilderness owns certain real estate located in Lincoln, Nebraska, legally described on Exhibit "A" attached hereto and incorporated by this reference. (the "Wilderness Property").
- B. Timberland owns real property located adjacent to the Wilderness Property, legally described on Exhibit "B" attached hereto and incorporated by this reference (the "Timberland Property").
- C. Wilderness is constructing a townhome development on the Wilderness Property.
- D. There is an existing pedestrian trail and bike path that runs through both the Timberland Property and the Wilderness Property and the location of the pedestrian trail and bike path will interfere with the development and construction of the townhome development.
- E. Wilderness desires to relocate the existing pedestrian trail and bike path so that it does not interfere with the development and construction of the townhome development.
- F. Wilderness desires to acquire and Timberland desires to convey a temporary construction easement over and through the Easement Area, defined below, for the purpose of relocating the pedestrian trail and bike path.
- G. Wilderness and Timberland have also reached an agreement about the use and maintenance of the pedestrian trail and bike path as set forth herein.

\$40.50

NOW THEREFORE, in consideration of the benefits to be derived from the facilities and the utility lines described herein, and in further of One and No/100 Dollars (\$1.00), the receipt of which is hereby acknowledged, and other valuable consideration, Timberland and Wilderness agree as follows:

1. **Grant of Temporary Construction Easement.** Timberland hereby grants to Wilderness a temporary construction easement upon the Timberland Property to relocate the pedestrian trail and bike path. The pedestrian trail and bike path shall be approximately six (6) feet in width. The temporary construction easement granted herein shall be limited to that area depicted on Exhibit "C", attached hereto and incorporated by this reference (the "Easement Area"). The parties further agree that the relocation and construction of the new pedestrian trail and bike path shall be the sole cost and expense of Wilderness. The construction easement shall expire upon completion of the relocation and construction of the trail or on July 1, 2008, whichever occurs first, unless the parties agree in writing to extend the expiration date of the construction easement.

2. **Use of Pedestrian Trail and Bike Path.** Both Parties shall have the right to use the pedestrian trail and bike path as located on the Timberland Property and the Wilderness Property on a non-exclusive basis for pedestrian and bicycle access purposes.

3. **Binding Effect.** The grant of this Joint Easement and Use agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Timberland and Wilderness, including but not limited to the owners of the Wilderness Townhomes who shall be entitled to use and enjoy the pedestrian trail and bike path, and the residents of the Timberland Property who shall also be entitled to use and enjoy the pedestrian trail and bike path.

4. **Maintenance.** The parties agree that the pedestrian trail and bike path located south of Norwood Drive shall be maintained and kept in good repair and shall be kept clear of snow, ice, and other obstructions. The maintenance obligations of the parties shall include any construction, reconstruction, removal, replacement, operation, maintenance, repair or improvement of the pedestrian trail and bike path. All maintenance shall be performed in a workmanlike manner. All obligations required hereunder for the maintenance of the pedestrian trail and bike path located south of Norwood Drive shall be performed by Wilderness, which shall be responsible for all costs and expenses for such obligations.

5. **Restoration.** Wilderness shall promptly restore or cause to be restored the surface or subsurface of the Easement Area to substantially its prior condition as existed before any construction, reconstruction, removal, replacement, operation, maintenance, repair, improvement, or any other use of this Easement. Such restoration shall be performed in a workmanlike manner. If, in the course of Wilderness constructing and/or maintaining the trail or otherwise using the Easement Area, damage occurs to: (a) the landscaping, (b) irrigation systems and/or equipment, or (c) other improvements on the Timberland Property, Wilderness shall promptly notify Timberland in writing. Wilderness shall promptly restore the damage at its sole cost and expense.

6. **Liability.** The sole rights granted herein are the rights to use the pedestrian trail and bike path and the Easement Area for the purposes described herein, and each party shall be liable to the other party for any damage caused by the use of the pedestrian trail and bike path or the Easement Area by them or their employees, invitees, agents, successors or assigns. Wilderness further agrees that Wilderness shall not cause, permit, or allow any use of the Easement Area that will materially interfere with the use of the Timberland Property by Timberland.

7. **Termination.** This Joint Easement and Use Agreement shall not be released, terminated, revoked, amended, or modified in any manner, without written consent of the parties. Any purported release, termination, revocation, amendment, or modification without such written consent shall be null and void and of no force and effect.

8. **Insurance and Indemnification.** Commencing with the date of this Agreement and hereafter, Wilderness shall, at its own expense, maintain general public liability insurance against claims for personal injury or death or property damage occasioned by accident occurring upon, in, or about the Easement Area resulting from the rights granted herein. Wilderness shall indemnify and hold harmless Timberland from and against any and all claims, actions, damages, liability, and expense in connection with loss of life, personal injury, or damage to property, or any of the above, occasioned wholly or in part by any act or omission of Wilderness, its tenants, subtenants, agents, employees, licensees, or invitees.

9. **Other Agreements.** This Joint Easement and Use Agreement shall constitute the entire easement and agreement between the owners of the Timberland Property and the Wilderness Property and the Wilderness with respect to the subject matter hereof and supersedes all prior easements of record, if any, relating to the property referenced herein.

10. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Easement.

Dated this 14 day of May, 2007.

"TIMBERLAND"

TIMBERLAND NEBRASKA I, LLP,
a Minnesota limited liability
partnership

By:


Authorized Representative

"WILDERNESS"

WILDERNESS VIEW TOWNHOMES,
L.L.C., a Nebraska limited liability
company

By:


Authorized Representative

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)



The foregoing instrument was acknowledged before me this 14 day of May, 2007, by Robert Fransen, Authorized Representative of Timberland Nebraska I, LLP, a Minnesota limited liability partnership, on behalf of the partnership.

Cheryl A. Auchstetter
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 16 day of May, 2007, by Brock Collingsworth, Manager of Wilderness View Townhomes, L.L.C., a Nebraska limited liability company, on behalf of the company.

R Kent Radke
Notary Public



**LENDER CONSENT FOR
TIMBERLAND NEBRASKA I, LLP**

The undersigned, duly authorized representative of Fannie Mae ("Lender"), the Lender of record of Timberland Nebraska I, LLP, the Grantor of the foregoing easement, hereby consents to the grant of the foregoing easement by Timberland Nebraska I, LLP, and agrees to not disturb the use of such easement by the Grantee. Such Lender further agrees that in the event of default of any such lien by Timberland Nebraska I, LLP, it shall not name the Grantee of such easement in any legal proceeding based upon such default.

FANNIE MAE


Michael W. Dick

By: Asst. Vice President
Name/Title

STATE OF Maryland)
COUNTY OF Montgomery) ss.

The foregoing instrument was acknowledged before me this 14th day of May, 2007, by Michael W. Dick Asst. of Fannie Mae, on behalf of the Company.

HARRIET L. COLES-WILLIAMS
Notary Public
Montgomery County, Maryland
My Commission Expires August 12, 2008

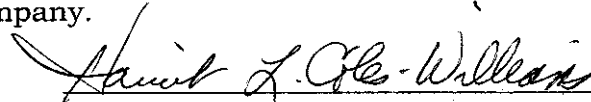

Notary Public

EXHIBIT "A"

WILDERNESS PROPERTY

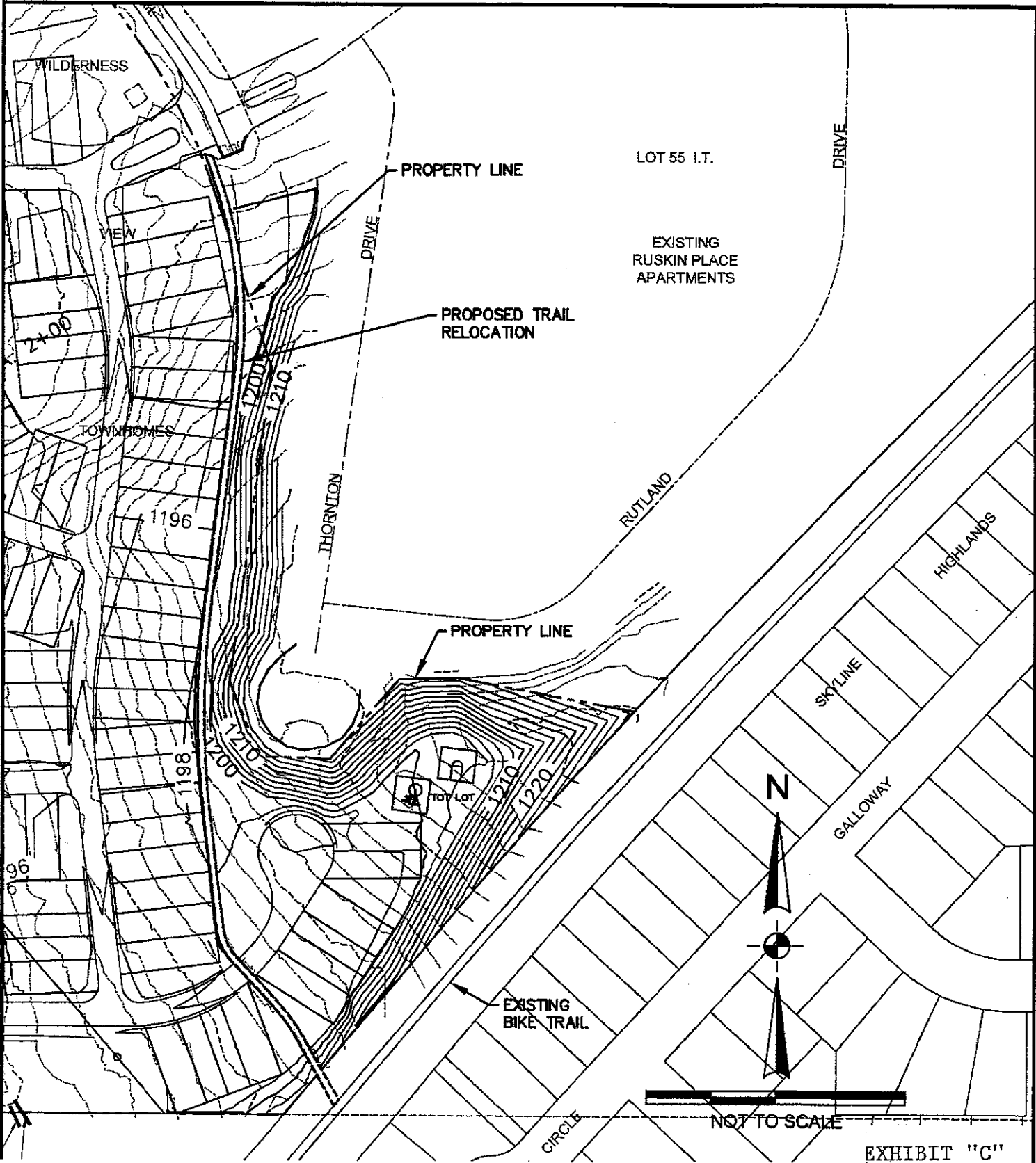
A tract of land located In Lot 55, Irregular Tract in the Northeast Quarter of Section 14, township 9 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, and more fully described as follows:

Beginning at the Southwest corner of said Northeast Quarter, thence: N00°25'58"W (assumed) on the West line of said Northeast Quarter a distance of 851.71 feet to a point on the North line of said Lot 55; thence: N53°30'23"E on said line, a distance of 840.38 feet; thence: S35°37'50"E, a distance of 152.75 feet to the point of curvature of a curve to the right having a central angle of 17°31'10", a radius of 615.00 feet, an arc length of 188.05, a chord length of 187.32 feet and a chord bearing S26°52'15"E,; thence: on said curve, a distance of 188.05 feet to the point of tangency; thence: S18°06'39"E, a distance of 206.00 feet; thence: S07°16'57"W, a distance of 368.65 feet; thence: S21°04'34"E, a distance of 93.23 feet; thence: S87°57'00"E, a distance of 81.82 feet; thence: N40°49'55"E, a distance of 122.22 feet; thence: N88°25'54"E, a distance of 70.11 feet; thence: S79°19'13"E, a distance of 207.19 feet to a point on the southeasterly line of said Lot 55 and the point of curvature of a curve to the left, having a central angle of 02°09'35", a radius of 11634.20 feet, an arch length of 438.59 feet, a chord length of 438.56 feet and a chord bearing S41°14'29"W; thence: on said curve, a distance of 438.59 feet to the point of tangency; thence: S49°09'47"W, on said southeasterly line, a distance of 180.33 feet to a point on the south line of said Northeast Quarter; thence: N89°49'46"W, on said line, a distance of 923.59 feet to the point of beginning and containing a calculated area of 25.457 acres more or less.

EXHIBIT "B"

TIMBERLAND PROPERTY

Remaining portion of Lot 55 of Irregular Tracts in the Northeast Quarter of Section 14, Township 9 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.



PROJECT NO.:	069-004-06
DATE:	FEBRUARY 2007
DESIGNED:	AVW
DRAWN:	DLB
CHECKED:	AVW
SHEET NO.:	1 OF 1

TRAIL EXHIBIT
WILDERNESS VIEW TOWNHOMES - C.U.P.
 LINCOLN, NEBRASKA

THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF ENGINEERING, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ENGINEERING, INC.

ENGINEERING, INC.
 3803 N. 153RD STREET, SUITE 201
 OMAHA, NEBRASKA 68118
 402.505.4335 (PH) . 402.505.4432 (FAX)

EXHIBIT "C"