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Lancaster County, NE Assessor/Register of Deeds Office EASE  
Pages 9



**TEMPORARY GRADING CONSTRUCTION  
AND  
PERMANENT GRADE EASEMENT AGREEMENT**

This Temporary Grading Construction and Permanent Grade Easement 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 that certain real property located in the Lincoln, Nebraska, which is legally described on Exhibit "A" attached hereto and incorporated by this reference ("Wilderness Property");
- B. Timberland owns property located adjacent to the Wilderness Property, which is legally described on Exhibit "B" attached hereto and incorporated by this reference ("Timberland Property");
- C. Wilderness is constructing a townhome development on the Wilderness Property, the grading of which requires some transitional grading between the Wilderness Property and the Timberland Property;
- D. Timberland has agreed to grant to Wilderness a temporary easement on, over, and across the southern edge of the Timberland Property for the purpose of performing temporary and permanent grading activities, in accordance with the terms and conditions more particularly provided herein.

\$40.50

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties (individually, a "Party" and collectively, the "Parties") agree as follows:

1. **Grading.** Wilderness shall, at its sole cost and expense, perform the grading as expeditiously as is reasonable and in a good and workmanlike manner. Wilderness shall be responsible for the design and grading necessary to accommodate the transition of grade between the Wilderness Property and the Timberland Property and a 3 to 1 slope must be maintained. Wilderness shall also be responsible to establish a permanent ground cover on the Easement Area once the grading and construction is complete. Wilderness shall be responsible for the ground stabilization and erosion prevention of the Easement Area during the grading until the establishment of the ground cover.

2. **Temporary Construction Easement.** In connection with the grading to be performed by Wilderness on the Timberland Property, Timberland hereby grants to Wilderness a temporary construction easement upon the Timberland Property in order for Wilderness to perform the grading. The temporary construction easement granted herein shall be limited to that area depicted on Exhibit "C", attached and incorporated by this reference (the "Easement Area"). This grant of temporary easement includes the right to enter upon, deposit fill, pass and repass over and along said easement wherever necessary for the purposes set forth above and to hold the material of said

grading in repose against ordinary erosion. All fill deposited on the Timberland Property shall be obtained from the Wilderness Property and shall not be imported from an off-site location.

3. **Grade Easement.** Once the grading is completed by Wilderness, Timberland agrees to not disturb, alter, or modify the permanent grade so established without the express written consent of Wilderness. Timberland grants a permanent and nonexclusive easement to Wilderness on such graded area to maintain such grade.

4. **Lateral Support Obligation.** Wilderness hereby acknowledges that the structures and buildings located on the Timberland Property, located adjacent to the property line between the Wilderness Property and the Timberland Property, are designed and constructed in a fashion that their structural integrity rely in perpetuity on the lateral pressure exerted by the land along the entire property line. Wilderness shall complete the grading contemplated by this agreement in a fashion consistent with the design and lateral support requirements of these structures and buildings. In the event that the grading activities of Wilderness cause any damage to the Timberland Property or to any structures or buildings located thereon, Wilderness shall immediately repair such damage at its sole cost and expense, and Wilderness shall indemnify and hold Timberland harmless against such damage as provided herein.

5. **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.

6. **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 grading activities or other construction, reconstruction, removal, replacement or any other use of this Easement. Such restoration shall be performed in a workmanlike manner.

7. **Indemnity; Hold Harmless.** Except to the extent caused by the negligence or willful misconduct of Timberland, its subcontractors, and subagents, Wilderness hereby agrees to indemnify, defend, protect, and hold harmless Timberland (including its partners, officers, employees and agents) from and against all suits, actions, claims, costs (including reasonable attorneys' fees to the extent permitted by law), expenses and liabilities, including any action or proceedings brought thereon, arising from or as a result of the injury to or death of any person, or damage to the property of any person as a result of or caused by the negligence or willful misconduct of Wilderness, its contractors, agents and/or employees in performing the grading, including but not limited to construction liens and all other Wilderness obligations arising from such grading.

8. **Notice.** Any notice, report of demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, or delivered by a nationally recognized overnight carrier to the parties, on the third business day following the date of mailing or on the following business day following overnight delivery.

9. **Construction.** The captions of the paragraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction. All exhibits attached hereto are by reference incorporated in and made a party of this Agreement.

10. **Amendment.** This Agreement may not be modified, changed or waived orally, but only by an instrument or instruments in writing signed by the parties hereto.

11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which separately shall be considered an original but all of which together shall be considered one and the same Agreement.

The undersigned have executed and make this Agreement effective as of the date first written above.

**[Signatures on following pages]**

"WILDERNESS"

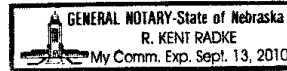
WILDERNESS VIEW TOWNHOMES,  
L.L.C., a Nebraska limited liability  
company

By: Brian C Collinsworth  
Name: Brian C Collinsworth  
Title: Manager

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

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

R Kent Radke  
Notary Public



"TIMBERLAND"

TIMBERLAND NEBRASKA I, LLP,  
a Minnesota limited liability  
partnership

By: [Signature]  
Name: ROBERT FRANSEN  
Title: Executive Administrator

STATE OF Minnesota )  
 ) ss.  
COUNTY OF Hennepin )



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

Cheryl A Auchstetter  
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: **Michael W. Dick**  
Name: **Asst. Vice President**

STATE OF Maryland )  
COUNTY OF Montgomery ) ss.

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

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

Harriet L. Coles-Williams  
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 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska, and more fully described as follows:

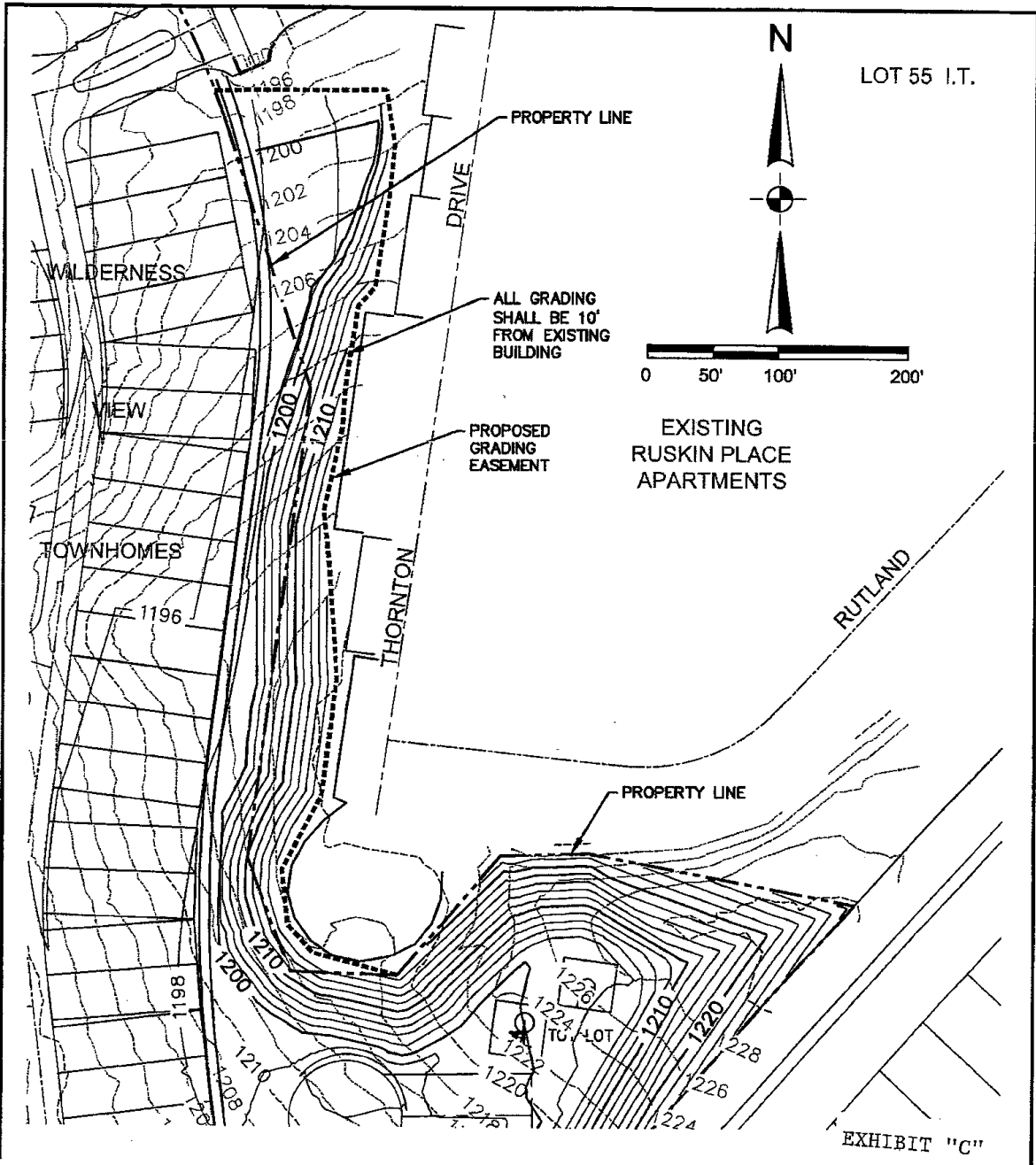
Beginning at the Southwest corner of said Northeast Quarter, thence: N00°25'58"W (assumed) on the West line of said Northeast Quarter a distance of 851.71 feet to a point on the North line of said Lot 55; thence: N53°30'23"E on said line, a distance of 840.38 feet; thence: S35°37'50"E, a distance of 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 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska.





PROJECT NO.:	008-004-06
DATE:	FEBRUARY 2007
DESIGNED:	AVW
DRAWN:	DLB
CHECKED:	AVW
SHEET NO.:	1 OF 1

**GRADING EXHIBIT**

**WILDERNESS VIEW  
TOWNHOMES - C.U.P.**

LINCOLN, NEBRASKA

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 EDWARDS ENGINEERING, INC. AND IS NOT TO BE  
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**ENGINEERING, INC.**  
 3803 N. 153RD STREET, SUITE 201  
 OMAHA, NEBRASKA 68116  
 402.505.4355 (PH) - 402.505.4432 (FAX)

EXHIBIT "C"