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**AMENDED AND RESTATED  
UTILITY EASEMENT AGREEMENT**  
(Water Line)

This Amended and Restated Utility Easement Agreement (Water Line) is made this 13<sup>th</sup> day of March, 2008, by and between Wilderness View Townhomes, L.L.C., a Nebraska limited liability company ("Grantee") and Timberland Nebraska I, LLP, a Minnesota limited liability partnership ("Grantor").

**RECITALS**

- A. Grantee owns certain real estate located in Lincoln, Nebraska, legally described on Exhibit "A" attached hereto and incorporated by this reference (the "Wilderness View Property").
- B. Grantor owns real property located adjacent to the Wilderness View Property, legally described on Exhibit "B" attached hereto and incorporated by this reference (the "Timberland Property").
- C. Grantor and Grantee executed a Utility Easement Agreement dated May 16, 2007 and recorded on May 24, 2007, with the Lancaster County Register of Deeds as Instrument #2007025721, to run a water service line across a portion of the Timberland Property (the "Original Easement").
- D. The easement area defined in the Original Easement was generally located on the western thirty (30) feet of the Timberland Property, but the alignment of the off-site water main was left to be determined at the time of final design in conjunction with input from the City of Lincoln Water Department.
- E. The exact location of the easement area in the final design has been slightly modified such that a small portion of the northeastern edge is outside of the easement area defined in the Original Easement.
- F. Grantor and Grantee desire to correct the legal description of the Original Easement and conform the easement area to the final design.

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, Grantor and Grantee agree as follows:

- 1. **Amended and Restated Easement.** This Utility Easement Agreement amends, restates and corrects the legal description of the Original Easement.

*Celine Williams*

File on Exhibit B legal only

2. **Grant of Easement.** Grantor does hereby convey to Grantee, its respective successors and assigns, an underground utility easement, to construct, reconstruct, maintain, repair, replace, improve, operate, use and remove utility services, including underground service lines and associated improvements for a water service line necessary to serve the Wilderness View Property, and such other property as determined by Grantee and the City of Lincoln, Nebraska, along with the right to enter the Easement Area (as defined below) for purposes of constructing, reconstructing, maintaining, repairing, replacing, improving, operating, using, and removing the water service line in and under the property defined herein as the Easement Area. The parties agree that the Easement Area shall be for that area depicted on the map attached as Exhibit "C" attached hereto and incorporated by this reference (the "Easement Area"). This Easement shall also provide for the right of Grantee, or its successors and assigns, to construct, reconstruct, maintain, repair, replace, improve, operate, and use the improvements located in the Easement Area and to access the Timberland Property for such purposes.

3. **Binding Effect.** The grant of this easement shall be binding upon the heirs, executors, administrators, successors and assigns of Grantor herein. Grantee and its successors and assigns, including but not limited to the owners of the Wilderness View Townhomes and shall be entitled to use and enjoy the easement granted by Grantor herein.

4. **Maintenance.** Grantee shall maintain and keep in good repair the utility services located in the Easement Area. Such maintenance obligations shall be performed in a workmanlike manner and shall be solely at the cost and expense of the Grantee. After construction, Grantor shall remain solely responsible for maintenance of the surface of the Easement Area with respect to any items unrelated to the utility services.

5. **Grantor's Limitations.** The Grantor shall not be permitted to, without first securing the prior written consent of Grantee, which consent may be withheld in Grantee's sole and absolute discretion, construct or permit to be constructed any structure on, over, or within the Easement Area.

6. **Conduct of Work and Notification.** Any installation, maintenance, replacement and/or repair of the water line performed by Grantee, its agents, and its employees shall be performed (a) solely at Grantee's sole cost and expense, (b) 10 days after delivery of written notice to Grantor (except in an emergency the work may be initiated after reasonable notice), (c) in such a manner as to reasonably minimize interference with the use and enjoyment of the Timberland Property by Grantor and others occupying or lawfully present on the Easement Area, (d) with adequate provision for the safety and convenience of all persons using the surface of such areas, and (e) diligently so as to complete such work as quickly as reasonably possible.

7. **Liability.** The sole rights granted herein are the rights to use 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 Easement Area by them or their employees, invitees, agents, successors or assigns, contrary to the terms of this Easement, provided, however, that there shall be no liability on Timberland, its successors and assigns and persons occupying or lawfully present on the Easement

Area for damages, if any, which may be caused by normal and reasonable use of, or vehicular or pedestrian traffic over, the Easement Area.

8. **Termination.** This Easement 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.

9. **Insurance and Indemnification.** Commencing with the date of this Agreement and hereafter, Grantee shall, at its own expense, maintain general public liability insurance against claims for personal injury or death or property damaged occasioned by accident occurring upon, in, or about the Easement Area resulting from the rights granted herein. Grantee shall indemnify and hold harmless Grantor 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 Grantee, its tenants, subtenants, agents, employees, licensees, or invitees.

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 15<sup>th</sup> day of March, 2008.

"GRANTOR"

"GRANTEE"

TIMBERLAND NEBRASKA I, LLP  
a Minnesota limited liability  
partnership

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

By:

[Signature]  
Authorized Representative

By:

[Signature]  
Authorized Representative

STATE OF Minnesota )  
 ) ss.  
COUNTY OF Hennepin )



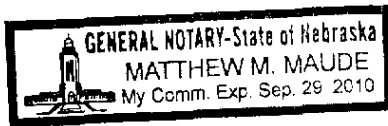
The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 2008, by Robert F. Wiser, Authorized Representative of Timberland Nebraska I, LLP, a Minnesota limited liability partnership, on behalf of the company.

[Signature]

Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 13<sup>TH</sup> day of MAY, 2008, by BRECK C. COLLINGSWORTH Manager of Wilderness View Townhomes, L.L.C., a Nebraska limited liability company, on behalf of the company.



*Matthew M. Maude*  
\_\_\_\_\_  
Notary Public

## EXHIBIT "A"

### WILDERNESS VIEW 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.

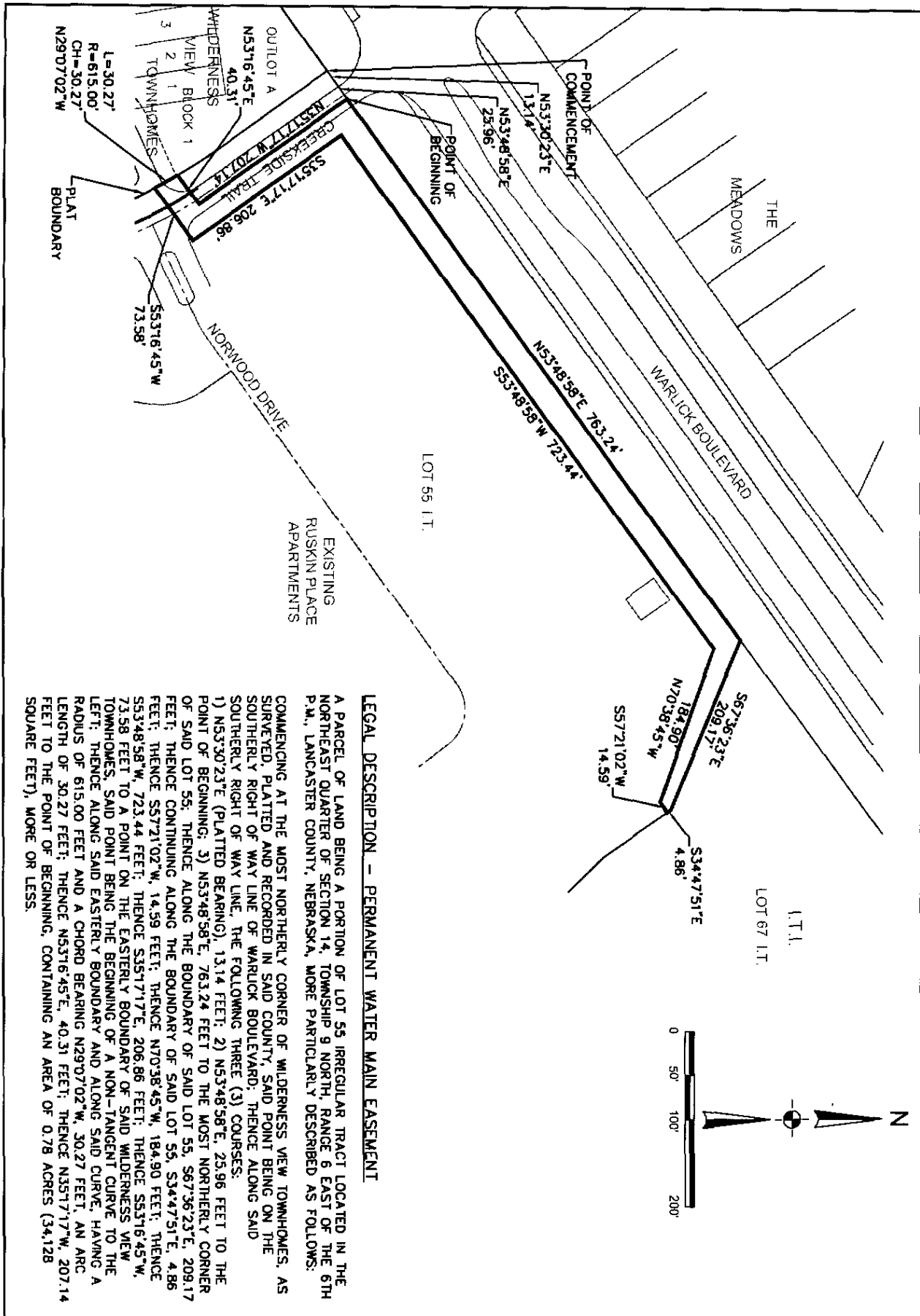
Now known as: Lots One (1) through Eighteen (18), Block One (1); Lots One (1) through Eight (8), Block Two (2); Lots One (1) through Thirty-Two (32), Block Three (3); Lots One (1) through Eighteen (18), Block Four (4); Lots One (1) through Thirty-Four (34), Block Five (5); and Outlots A, B, C, D, E, F, G, H, I, J, and K, Wilderness View Townhomes, Lincoln, Lancaster County, Nebraska.

**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.

*NKA Lot 89 N.E. 1/4*



**LEGAL DESCRIPTION - PERMANENT WATER MAIN EASEMENT**

A PARCEL OF LAND BEING A PORTION OF LOT 55 IRREGULAR TRACT LOCATED IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF WILDERNESS VIEW TOWNHOMES, AS SURVEYED, PLATTED AND RECORDED IN SAID COUNTY, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF WARLUCK BOULEVARD; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING THREE (3) COURSES:

- 1) N53°48'58"E, 13.14 FEET; 2) N53°48'58"E, 25.96 FEET TO THE POINT OF BEGINNING; 3) N53°48'58"E, 763.24 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 55; THENCE ALONG THE BOUNDARY OF SAID LOT 55, S67°36'23"E, 209.17 FEET; THENCE CONTINUING ALONG THE BOUNDARY OF SAID LOT 55, S34°47'51"E, 4.86 FEET; THENCE S87°21'02"W, 14.59 FEET; THENCE N70°38'45"W, 184.90 FEET; THENCE S53°48'58"W, 723.44 FEET; THENCE S35°17'17"E, 206.86 FEET; THENCE S53°16'45"W, 73.58 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID WILDERNESS VIEW TOWNHOMES, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT; THENCE ALONG SAID EASTERLY BOUNDARY AND ALONG SAID CURVE, HAVING A RADIUS OF 615.00 FEET AND A CHORD BEARING N29°07'02"W, 30.27 FEET, AN ARC LENGTH OF 30.27 FEET; THENCE N53°16'45"E, 40.31 FEET; THENCE N55°17'17"W, 207.14 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.78 ACRES (34,128 SQUARE FEET), MORE OR LESS.

PROJECT NO.:	08-001-0
DATE:	NOVEMBER 2007
DRAWN:	P.B.
CHECKED:	P.S.
SHEET NO.:	5

PERMANENT WATER MAIN EASEMENT  
RUSKIN PLACE APARTMENTS  
LOT 55 I.T.

WILDERNESS VIEW  
TOWNHOMES  
LINCOLN, NEBRASKA



**ENGINEERING, INC.**  
3805 N. 156TH STREET, SUITE 201  
OMAHA, NE 68184-8018  
402.907.4355 (P) | 402.908.4452 (FAX)