

PURPETUAL DRAINAGE AND MAINTENANCE EASEMENT AGREEMENT

This Perpetual Drainage and Maintenance Easement Agreement (“Easement”) is dated the date at the end hereof, by and between the **Beauty Creek Villa Home Property Owners Association** (hereinafter “Villas” or “Grantor”) and the **Valparaiso** City Utilities (hereinafter “VCU” or “Grantee”).

WITNESSETH Grantor certifies that it is the owner of the real estate (Open Space B) located in the Secondary Plat of Beauty Creek Villa Homes as per plat thereof, recorded as Plat File 49-F-6 and recorded as Instrument Number 2005-037457 on December 5, 2005 in the Office of the Recorder of Porter County, Indiana.

WITNESSETH FURTHER that the parties to this Easement have simultaneously executed a *Memorandum of Understanding* outlining some of the duties and responsibilities of the Parties under this Easement. Such document is attached as **Exhibit A** to this Easement.

WITNESSETH FURTHER that for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants and conveys upon the Grantee, its successors and assigns, in perpetuity, the exclusive use of the following location, for the purpose of footings (and other aspects of a vehicle overpass to be constructed over Beauty Creek), providing storm drain and overflow capacity and maintenance over upon, across and through the Grantor’s property commonly known as Easement Area and more fully known as an described in **Exhibit B** which has been attached hereto and made a part hereof. The Parties further state and agree as follows:

1. **Easement Area/Waterflow/Change of Beauty Creek:** The Easement Area is defined in **Exhibit B**. The Parties understand and recognize that the Easement Area includes “Beauty Creek” – a natural waterway. Recognizing natural water ways can alter their shape and course over time, Parties recognize and agree that should Beauty Creek alter or change its course beyond the existing Easement Area, and that such alteration and/or course changing frustrates the obligations of either Party under this Easement and/or the *Memorandum of Understanding*, (hereinafter “MOU”) Grantor (at the request of Grantee) shall reasonably expand the Easement Area at no additional cost to Grantee.

2. **Allowed Use in Easement Area:** The Grantee is hereby allowed to install, construct and maintain within the Easement Area, footings (and other aspects of a vehicle overpass to be constructed over Beauty Creek), and drainage facilities necessary to appropriately drain overflow from the Grantee residential development area. The anticipated location, size and angle of the drainage facilities is included and attached hereto as **Exhibit B**. Grantee will engage in proper and necessary erosion mitigation and channel and bank protective/armoring measures, on all sides of Beauty Creek near drainage spillway, necessary to protect the channel and bank from non-natural erosion, which otherwise would be caused by introduction of additional water drainage, coming from the Grantee drainage infrastructure.



3. **Access:** Grantee and its authorized agents are hereby allowed uninhibited access to the Easement Area at all times without interruption from the Grantor. Grantor is allowed uninhibited access to the Easement Area, at its own risk, so long as this access does not interfere with Grantee's use stated herein. Parties express driveway/vehicle/equipment access to the drainage facility area, post creation and installation, shall be replaced with trees/plants, and futurely shall be accessed from VCU access from the Brooks subdivision

4. **Maintenance of Greenspace:** Parties hereby agree that it is the intent of all Parties to minimize disruption to Beauty Creek and the adjacent natural vegetation and greenspace surrounding Beauty Creek in the Easement Area. Parties agree that as minimal as possible disruption shall occur and no trees greater than four inches in diameter shall be removed unless necessary to install footings and/or drainage infrastructure. Grantee agrees, in consultation with the City's arborist and horticulturalist, to plant 30 trees of at least +/-2" caliper and other native vegetation as agreed upon within the referenced MOU related hereto. The City of Valparaiso is willing to commit the services of its arborist and horticulturalist to develop a planting plan that is sustainable and consistent with the topography of the Easement Area and with plants and trees native to the Easement Area. Within 45 days of the completion of the installation of the footings and drainage infrastructure, Grantor and Grantee shall meet at the Easement Area and assess the impact and develop a plan to mitigate erosion issues. If able to be installed/planted (recognizing weather conditions), said plants and trees shall be installed within 45 days of the approval of the plan, at Grantee's expense. Parties recognize it is the desire of the Grantor to install as many trees as possible to strengthen Beauty Creek banks and adjacent areas. Except for the construction of the aforementioned public improvements, the Grantee agrees not to remove trees within the Easement Area unless the trees have fallen and could reasonably block Beauty Creek, become diseased (verified by City of Valparaiso arborist or horticulturalist) and a threat to other trees or vegetation, and/or, create a significant public safety concern. Parties agree that any tree planting and removal plans shall be developed with the input of the Grantor and consistent with the *Memorandum of Understanding*.

5. **Erosion Response Plan:** Any issues relating to erosion within the Easement Area shall be resolved consistent with the *Memorandum of Understanding*. Upon approval of a mitigation plan, efforts to implement shall commence in a timely manner with direction from the Valparaiso arborist or horticulturalist. Erosion response efforts shall be paid for by the Grantee.

6. **Duration/Perpetuity:** In exchange for the compensation agreed to between the parties, Parties agree this Agreement shall be perpetual in duration, only to be modified by a separate written agreement between the Parties.

7. **Waiver of Liability and Indemnification:** Grantee waives any and all claims of injury or other possible claim, while performing work on or within the Easement Area against Grantor, unless due to Grantor's gross negligence. Grantee further hereby agrees to indemnify and defend Grantor against any claim, brought against Grantor, related or stemming from an actionable claim related to injury or claim occurring within the Easement Area, whether from invitees or trespassers caused by any negligent act or omission of Grantee. This includes indemnification from

all liability, damages, legal fees, attorney fees, costs of experts or other damages incurred in defense of said claim.

8. **Unencumbered Title:** Grantor warrants that the Easement Area is free and clear of all liens and encumbrances. Grantee acknowledges that it shall not allow the land to be encumbered by any lien or encumbrance, as a result of the work they or their agents may perform thereon.

9. **Failure to Maintain:** Grantee hereby acknowledges that should Grantee fail to maintain the Easement Area in a manner consistent with this Easement and/or *Memorandum of Understanding*, after written notice has been issued, and **forty-five (45) days** have elapsed, Grantor is granted the ability to engage necessary agents to perform said required maintenance and expense said cost to the Grantee. Notwithstanding the proceeding, should Grantee reasonably determine that the work requested by the Grantor is unnecessary and/or may negatively impact the overpass and/or other improvements in the Easement Area, Grantee shall have the right to deny access of Grantor to the Easement Area to engage in such maintenance activities. Unresolved disputes shall be resolved as provided in Section 13.

10. **Environmental Hazards:** Grantee shall not cause or permit to be caused by its employees, agents, contractors, subcontractors, successors or assigns for any hazardous substances, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") or as amended, any pollutants, contaminants, hazardous waste or other materials to be discharged or placed within the Easement Area.

11. **Miscellaneous:** This Agreement contains the agreement of all Parties hereto. It shall run with the land and all successors/assignees thereto. All rights not granted, are retained by the Grantor.

12. **Location:** Parties agree Grantee shall install permanent markers to locate the corners of the Easement Area.

13. **Dispute Resolution:** This Easement shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana (excluding the choice of law rules thereof). The parties agree that all disputes and matters whatsoever arising under, in connection with, or incident to the Easement shall be litigated, if at all, in and before a court located in the State of Indiana -- Porter County to the exclusion of the courts of any other state or country. The prevailing party shall be entitled to reimbursement to court costs and attorneys' fees.

In witness whereunto the Parties have executed this Easement on JUNE 11, 2021,
2021.

Signature Page to Follow

Grantor: **Beauty Creek Villa Home Property Owner's Association**

By: *Michael Nietert*
Its: President

Grantee: **Valparaiso City Utilities**

By: *[Signature]*
Its: President

STATE OF _____ : S.S.
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that Michael Nietert, the above signed, known to me to be the same person whose name is subscribed above, appeared before me this day and acknowledged the execution of the foregoing instrument as their voluntary act and deed.

WITNESS my hand and notarial seal this 14th day of June, 2021.
Jennifer Beauchamp Notary Public Jennifer Beauchamp Name Printed

My commission expires 02-16-25 County of Residence Porter

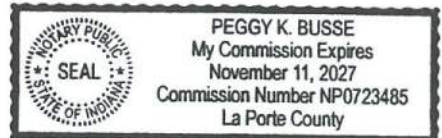


STATE OF _____ : S.S.
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that David Bengs, the above signed, known to me to be the same person whose name is subscribed above, appeared before me this day and acknowledged the execution of the foregoing instrument as their voluntary act and deed.

WITNESS my hand and notarial seal this 22nd day of June, 2021.
Peggy Busse Notary Public Peggy Busse Name Printed

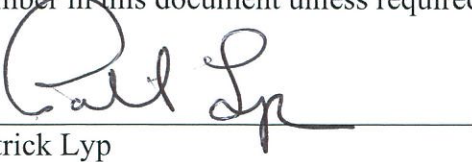
My commission expires 11/11/27 County of Residence LaPorte



This Easement accepted by the **Valparaiso City Utilities** acting by and through its Board at a meeting held on the 22nd day of June, 2021.

[Signature]
David Bengs, President

I affirm, under penalties of perjury, that I have taken reasonable care to redact each social security number in this document unless required by law.

A handwritten signature in cursive script, appearing to read "Patrick Lyp", is written over a horizontal line.

Patrick Lyp

This Instrument Prepared By: Patrick Lyp (20240-64), 166 Lincolnway, Valparaiso Indiana.

Exhibit A
Memorandum of Understanding

Memorandum of Understanding

This **Memorandum of Understanding** (“Agreement”) is entered between the **City of Valparaiso** (“City”), **Valparaiso City Utilities** (“VCU”), **Beauty Creek Villa Homes Property Owners Association** (“Villas”) and **The Brooks Development, Inc.** (“Brooks”).

Whereas, the Brooks is in the process of developing a residential subdivision known as The Brooks at Vale Park located south of Ransom Road between Beauty Creek Villa Homes and Keystone subdivisions.

Whereas, as part of the new residential subdivision significant stormwater management features have been incorporated as well as a connection of Vale Park Road from Keystone subdivision to Beauty Creek Villa Homes subdivision (including a vehicle overpass over Beauty Creek).

Whereas, for the construction of the vehicle overpass and the management of Beauty Creek, the City is requesting the Villas to dedicate an easement.

Whereas, the Villas is willing to dedicate the easement area, but is requesting certain actions be taken by the City and Brooks.

Wherefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged and the parties intending to be bound, agree as follows:

1. Prior to opening the Vale Park Road connection between Keystone subdivision and Beauty Creek Villa Homes subdivision to general public use, the City will:

a. construct a “choker” or “bulb-out” at the intersection of Vale Park Road and Winter Park Drive by extending the curb on both sides of Vale Park Road. As part of this construction, an Intersection Speed Table will be constructed in the middle of the intersection that will raise the roadway. Pedestrian crossings will be designated on top of this speed table.

b. install crosswalks on the east side of the Vale Park Road and Kickbush Drive intersection (currently a 4-way stop intersection) by **July 31, 2021**.

c. install a “No Through Truck” sign for eastbound Vale Park Road traffic east of Froberg Road.¹

d. install a “No Through Truck” sign on westbound Vale Park Road west of Campbell Street.²

2. Within 1-year and before the 3-year anniversary (2 studies total) after the opening of Vale Park Road connection between Keystone subdivision and Beauty Creek Villa Homes subdivision to general public use, the City will initiate a traffic study to evaluate measurable parameters to evaluate the need for possible additional traffic calming measures. The results will be shared with Villas’

¹ Trucks making local deliveries would not be prohibited.

² Trucks making local deliveries would not be prohibited.

representatives and upon request by either party, a meeting will be scheduled to review the findings and recommendations.

3. As to erosion concerns raised by residents of the Villas, it is the expectation of the parties that the planned Vale Park Road enhancements will reduce identified erosion issues. On the first year anniversary of the completion of the Vale Park Road enhancements and the opening the Vale Park Road connection between Keystone subdivision and Beauty Creek Villas Homes subdivision to general public use, representatives from the Villas and the City Engineer will meet and inspect the identified areas of concern to determine if the conditions have stabilized or worsened. If erosion problems exist, the City will appropriately address, utilizing natural growth areas if possible and reverting to granite cobble stone or other appropriate material if natural measures are untenable. As to the erosion issue just west of the Villas east boundary, south of the existing trail, within 90-days of the execution of this Agreement, the City will remedy the existing erosion with suitable fill, natural growth measures, and fabric and appropriately sized stone (granite cobble) or other appropriate material. City will seek to match with similar stone utilized in adjacent areas for erosion control.

4. The Villas will grant the City the easement attached as **Exhibit A** for the purposes of constructing certain public improvements as shown in attached **Exhibit B** and for the maintenance said public improvements as well as the channel of Beauty Creek. As provided in the easement, the City agrees to certain condition as to current and future management. Among the commitments, the City agrees, in consultation with the City's arborist and horticulturalist, to plant trees of at least +/-2" caliper and other native vegetation within the easement area. The City is willing to commit the services of its arborist and horticulturalist to develop a planting plan that is sustainable and consistent with the topography of the easement area. Notwithstanding the preceding, the parties acknowledge that approximately 13 trees were removed outside the Easement Area by contractors working for the Brooks. In cooperation with the Villas, those improperly removed trees will be replanted at the expense of the City. In addition, the City commits that a minimum of at least 30 trees will be planted inside the Easement Area and in the area where trees were improperly removed. The exact location will be determined by the City's arborist and horticulturalist. Except for the construction of the aforementioned public improvements the City agrees not to remove trees within the easement unless the trees have fallen and blocked Beauty Creek, become diseased and a threat to other trees or vegetation, or, an imminent threat to life or property. The City shall have access within the easement area at all times in order to provide for the maintenance of Beauty Creek, the culvert under Vale Park Road, and, the outflow channel and spillway channel from the Brooks detention pond. Should erosion issued arise in Beauty Creek within this easement area, upon notification, the City will respond within 5-days to evaluate the issue. A mitigation plan will be developed within 30-days. Issues impacting public safety will be addressed immediately. Prior to execution of this Agreement, representatives from the Villas and the City Engineer have walked the proposed easement area to confirm boundaries and identify locations for tree planting. After execution of this Agreement, the City will install permanent above-ground boundary stakes identifying the corners of the easement.

5. Near Westwind Avenue, a detention pond area was created to collect stormwater from the Beauty Creek Villa Homes subdivision development. Over time, the bottom of the detention pond has been covered with sediment captured by the stormwater drains, and from the lack of erosion control measures during the development process. Villas is willing to incur all costs related for an excavator to excavate the sediment from the bottom of this pond. The City is agreeable to assist with excavators and dump trucks to load and transport sediment which the Villas excavated and stockpiled immediately

adjacent to a public road. The Villas will implement erosion control measures for the excavation and stockpiling of sediment. The Villas will submit a permit for the excavation and the City will issue the permit without a fee to the Villas. The City will only transport soil material and will not transport solids such as broken concrete or trash. The parties agree, in good faith, to coordinate this work at a mutually agreeable time and in an efficient manner that will minimize impact on residents. It is expected that the City's committed time will not exceed two (2) days. The City will also utilize their vacuum trucks to clear the inlets, leading from City stormwater drains, which allow the drainage into the detention pond with the understanding that the vacuum truck cannot travel beyond the street surface.

6. **Dispute Resolution.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana (excluding the choice of law rules thereof). The parties agree that all disputes and matters whatsoever arising under, in connection with, or incident to the Agreement shall be litigated, if at all, in and before a court located in the State of Indiana -- Porter County to the exclusion of the courts of any other state or country. The prevailing party shall be entitled to reimbursement to court costs and attorneys' fees.

7. **Invalidity.** If any provision or part of any provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or any remaining part of any provision) of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained in this Agreement, but only to the extent of its invalidity, illegality or unenforceability.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and any prior agreements, understandings, or other matters, whether oral or written, are hereby merged into and made a part hereof, and are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.

9. **Notice.** Any notice, demand, request or other communication shall be in writing, shall be effective and deemed received the following business day when sent by overnight mail, upon transmission if sent by e-mail, or the third business day after deposited in first class United States mail, postage prepaid, and shall be addressed as follows, or to such other addresses as the parties may designate by like notice:

If to City:

Michael Jabo, Engineering Director
166 W. Lincolnway
Valparaiso, Indiana 46383
mjabo@valpo.us

If to VCU:

Steve Poulos, Director
205 Billings Street

If to Beauty Creek:

Nathan D. Vis
Vis Law, LLC
PO Box 980
Cedar Lake, IN 46303

If to Brooks

V. Jacob Wagner
VJW Limited LLC

Valparaiso, IN, 46383
spoulos@valpo.us

212 Lincolnway
Valparaiso, Indiana 46383

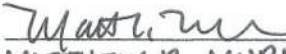
Notwithstanding anything to the contrary, all notices and demands for payment actually received in writing shall be considered to be effective upon the receipt regardless of the procedure or method utilized to accomplish delivery.


10. **Continuing Cooperation.** To the extent questions, concerns, or disputes develop concerning the subject matter of this Agreement, the parties shall cooperate to resolve the same in a prompt manner.

11. **Authorization.** The individual executing this Agreement represent they have the authority to sign this Agreement.

City of Valparaiso

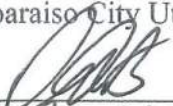
Beauty Creek Villa Homes Property Owners Association

By: 
Its: MATTHEW R. MURPHY, MAYOR
Date: 6-11-2021

By: 
Its: PRESIDENT
Date: 6-11-2021

Valparaiso City Utilities

The Brooks Development, Inc.

By: 
Its: President
Date: 6/22/21


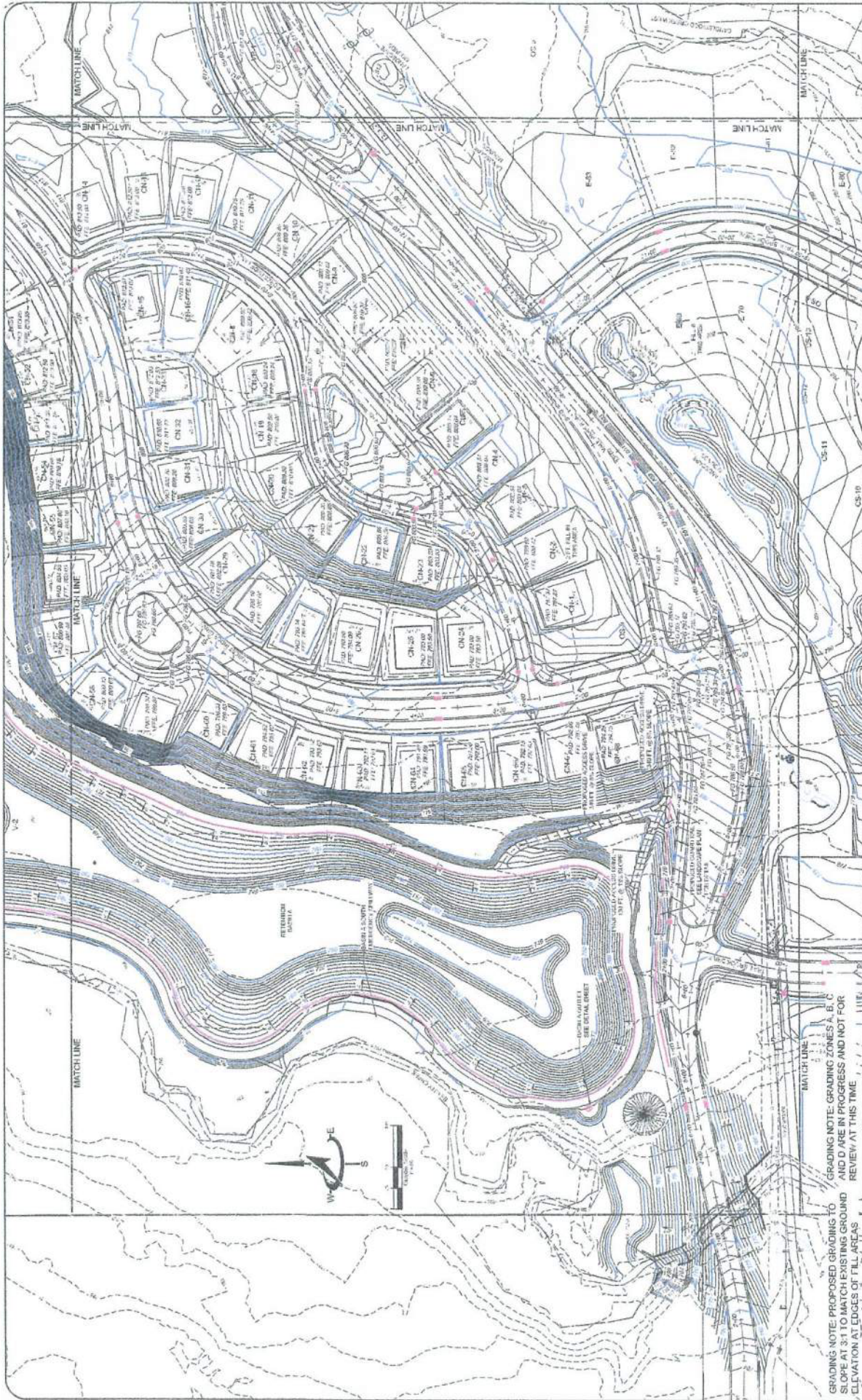
By: 
Its: mgr.
Date: 6-22-21

Exhibit B



GRADING NOTE: PROPOSED GRADING TO SLOPE AT 3:1 TO MATCH EXISTING GROUND AND D ARE IN PROGRESS AND NOT FOR REVIEW AT THIS TIME

<p>PROPOSED GRADING PLAN - WEST</p> <p>THE BROOKS AT VALE PARK, P.L.L.C. THE BROOKS LAND, L.L.C. SW 1/4 SEC. 11, T20N, R6W, CENTER TWP CITY OF VALPARAISO, PORTER COUNTY, INDIANA</p> <p>JOB NUMBER: 413-0248 SHEET 19 OF 130 A-43267</p>	
<p>8808 E. U.S. Hwy. 20 P.O. Box 950 New Carlisle, IN 46552 (574) 654-3450 info@marbach.us www.marbach.us</p>	<p>8808 E. U.S. Hwy. 20 P.O. Box 950 New Carlisle, IN 46552 (574) 654-3450 info@marbach.us www.marbach.us</p>
<p>8808 E. U.S. Hwy. 20 P.O. Box 950 New Carlisle, IN 46552 (574) 654-3450 info@marbach.us www.marbach.us</p>	<p>8808 E. U.S. Hwy. 20 P.O. Box 950 New Carlisle, IN 46552 (574) 654-3450 info@marbach.us www.marbach.us</p>

Exhibit B
Easement Area

Beginning at the southeast corner of said Open Space B Parcel and traveling west along the south line of said Parcel N 90d00'00" W 125.0 feet (*See Note below) to a point along said south line; thence N 00d00'00" E 70.0 feet; thence N 23d37'55" E 120.0 feet; thence north and east 90.0 feet, more-or-less, to a point along the east line of said Parcel, said point along said east line is 230.0 feet north of the southeast corner of said Parcel; thence S 00d31'23" E 230.0 feet along said east line to the Point of Beginning.

Said Permanent Maintenance and Drainage Easement contains 0.50 Acres, more or less.

*The bearings contained within this description are based on the bearings as shown on said Beauty Creek Villa Homes Recorded Plat. (Plat File 49-F-6)

