



MISC 2009109277



OCT 08 2009 12:37 P 9

Fee amount: 45.50
FB: 01-60000
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/08/2009 12:37:06.00



2009109277

Return to: Mark G. Harrison, Edward Rose Development Company, 6101 Newport Rd., Kalamazoo, MI 49003 (269) 323-9484

filed as received

**PERMANENT SANITARY SEWER EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT**

Stone Creek Plaza, LLC, a Nebraska limited liability company and Western Springs Land Corp., a Nebraska corporation (collectively referred to herein as the "Grantors" and sometimes individually as "Stone Creek" and "Western Springs" respectively), in exchange for Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys unto Edward Rose Development Company, L.L.C., a Michigan limited liability company (the "Grantee"), and to its successors and assigns, a permanent sanitary sewer easement and right-of-way (the "Permanent Sanitary Sewer Easement") for the construction, maintenance and operation of a sanitary sewer and all appurtenances thereto, in, through, over, under and across the area legally described on Exhibit "A", attached hereto and incorporated herein by this reference, and a temporary construction easement and right-of-way (the "Temporary Construction Easement") for construction of the above-described sanitary sewer and all appurtenances thereto, in, through, over, under and across the area legally described on Exhibit "A", attached hereto and incorporated herein by this reference. The Permanent Sanitary Sewer Easement and the Temporary Construction Easement are sometimes herein collectively referred to as the "Easements." The sanitary sewer and all appurtenances thereto are sometimes herein described as the "Improvements." The real property owned by Stone Creek which is burdened by the Easements is sometimes described as "Stone Creek's Property." The real property owned by Western Springs which is burdened by the Easements is sometimes described as "Western Spring's Property."

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with the right of ingress and egress over the Easements for the purpose of constructing, inspecting, maintaining and operating the sanitary sewer and all appurtenances thereto at the will of the Grantee. The Grantors may, continue to use the portion of the surface of the Easements, not occupied by sanitary sewer improvements, for other purposes, subject to the right of the Grantee to use the same for the purposes herein expressed. The Temporary Construction Easement shall terminate upon completion of initial construction of the sanitary sewer and related appurtenances, which may be evidenced by the recording of the sworn certification of the civil engineer responsible for preparation of the plans and supervision of the construction. The right is also hereby granted to Grantee to connect to and use, at no cost or charge, any existing sanitary sewer line, any future sanitary sewer line and any related easements (existing and/or future) within or connecting with the Permanent Sanitary Sewer Easement (the "Connection and Use Rights"). It is further agreed as follows:

35 361441

1. That no grading, fill or fill material, embankment work, buildings, improvements, or other structures, shall be placed in, on, over, or across the Permanent Sanitary Sewer Easement by Grantors or Grantors' successors or assigns, without the express written approval of the Grantee, except for landscaping or road, street or parking area surfacing or pavement which does not damage, interfere with or impinge on the functioning of the sanitary sewer or the Improvements. The Grantors' permitted Improvements and any surface plantings shall be maintained by Grantors, their successors or assigns.

2. Grantee agrees to bury its pipe to a depth that would allow normal farming practices and to cause any trench made in the Permanent Sanitary Sewer Easement to be properly refilled, the surface grade restored and the premises left in a neat and orderly condition.

3. That Grantors for themselves and their successors and assigns do confirm with the said Grantee and its assigns, the Grantors are well seized in fee of the real property on which the Easements are located and that they have the right to grant and convey the Easements and the Connection and Use Rights in the manner and form aforesaid, and that they shall warrant and defend the Easements and the Connection and Use Rights herein granted to Grantee, its successors and assigns, against the lawful claims and demands of all persons.

4. That, except as set forth in the last sentence of this paragraph 4:

- (a) this instrument contains the entire agreement of the parties with respect to the Easements;
- (b) there are no other different agreements or understandings, between the Grantors and the Grantee or its agents with respect to the Easements; and,
- (c) the Grantors, in executing and delivering this instrument, have not relied upon any promises, inducements, or representations of the Grantee or its agents or employees, except as are elsewhere set forth in this instrument.

Stone Creek and Grantee have entered into a separate agreement governing various matters, including the design and construction of the Improvements, which is intended to bind Stone Creek, but which is not intended to run with the real property that is burdened by the Easements and which is not intended to be binding on successors in interest to the real property that is burdened by the Easements.

5. Stone Creek, its successors and assigns, shall at its sole cost and expense, timely undertake and complete all inspection, management, repair, maintenance and replacement of the Improvements which are located on Stone Creek's Property, in accordance with industry standards and procedures, until such time as the responsibility for such testing, management, repair, maintenance and replacement have been assumed in writing by a Sanitary and Improvement District, City or County. Western Springs, its successors and assigns, shall at its sole cost and expense, timely undertake and complete all inspection, management, repair, maintenance and replacement of the Improvements which are located on Western Spring's Property, in accordance with industry standards and procedures, until such time as the responsibility for such testing, management, repair, maintenance and replacement have been assumed in writing by a Sanitary and Improvement District, City or County. The foregoing

obligations set forth in this Paragraph 5 are sometimes collectively referenced as the "Maintenance and Repair Obligations."

6. That the Easements, the Connection and Use Rights and the Maintenance and Repair Obligations shall inure to the benefit of Grantee, its successors and assigns, shall run with the land, and are intended to benefit all of real property (the "Benefited Property") which is legally described on Exhibit B, attached hereto and incorporated by this reference.

DATED this 2nd day of October, 2009.

GRANTORS:

Stone Creek Plaza, LLC, a Nebraska
limited liability company

Western Springs Land Corp.,
a Nebraska corporation

By: [Signature]
Its

By: [Signature]
Its

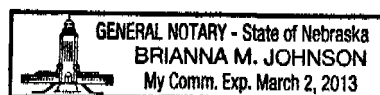
filed as is

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

filed as is

The foregoing instrument was acknowledged before me this 2nd day of October, 2009 by Gerald L. Torczon, manager of Stone Creek Plaza, LLC, a Nebraska limited liability company, on behalf of said company.

WITNESS my hand and notarial seal the day and year last above written.

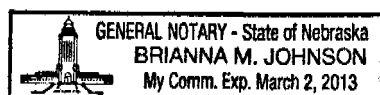


[Signature]
Notary Public
My Commission expires: 3/2/13

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 2nd day of October, 2009 by Gerald L. Torczon, president of Western Springs Land Corp., a Nebraska corporation, on behalf of said company.

WITNESS my hand and notarial seal the day and year last above written.



[Signature]
Notary Public
My Commission expires: 3/2/13

EXHIBIT A, 1 of 2

LEGAL DESCRIPTION

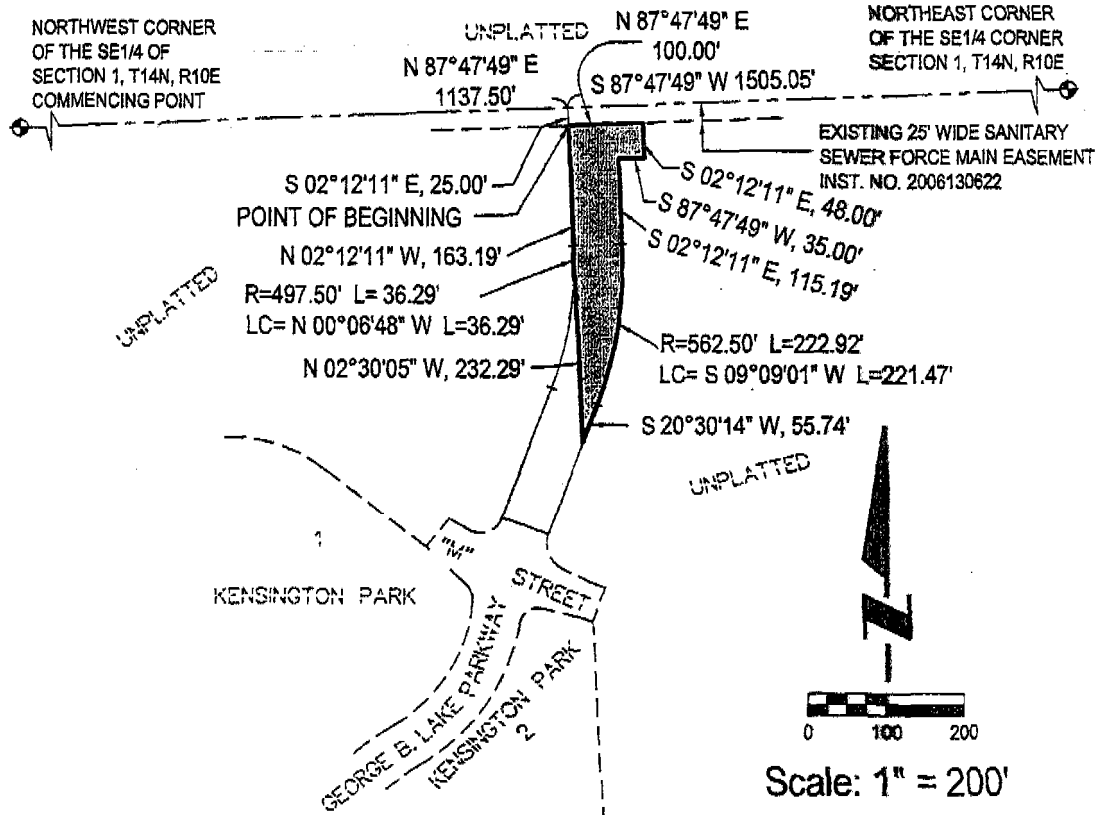
WESTERN SPRINGS LAND CORPORATION
CORPORATION WARRANTY DEED
INST NO. 2006057412

EXHIBIT "A"

A PERMANENT SANITARY SEWER EASEMENT LOCATED IN THE NW1/4 OF THE SE1/4 OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SE1/4 OF SECTION 1; THENCE N87°47'49"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID SE1/4 OF SECTION 1, A DISTANCE OF 1137.50 FEET; THENCE S02°12'11"E, A DISTANCE OF 25.00 FEET TO A POINT ON THE SOUTH LINE OF AN EXISTING 25 FOOT WIDE SANITARY SEWER FORCE MAIN EASEMENT RECORDED IN INSTRUMENT NO. 2006130622, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE N87°47'49"E ALONG SAID SOUTH LINE OF AN EXISTING 25 FOOT WIDE SANITARY SEWER FORCE MAIN EASEMENT RECORDED IN INSTRUMENT NO. 2006130622, A DISTANCE OF 100.00 FEET; THENCE S02°12'11"E, A DISTANCE OF 48.00 FEET; THENCE S87°47'49"W, A DISTANCE OF 35.00 FEET; THENCE S02°12'11"E, A DISTANCE OF 115.19 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 562.50 FEET, A DISTANCE OF 222.92 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S09°09'01"W, A DISTANCE OF 221.47 FEET; THENCE S20°30'14"W, A DISTANCE OF 55.74 FEET; THENCE N02°30'05"W, A DISTANCE OF 232.29 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 497.50 FEET, A DISTANCE OF 36.29 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N00°06'48"W, A DISTANCE OF 36.29 FEET; THENCE N02°12'11"W, A DISTANCE OF 163.19 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT SANITARY SEWER EASEMENT CONTAINS AN AREA OF 24,026 SQUARE FEET OR 0.552 ACRES, MORE OR LESS.



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
230 NORTH 17TH STREET, OMAHA, NE 68154 PHONE (402) 465-4700

Drawn by: WAC Chkd by: me 7-27-09 Chkd by: _____

Job No.: P2005.041.001 Date: 5/28/2009 Book No.: 1 OF 1

PERMANENT SANITARY SEWER EASEMENT
NW1/4 OF THE SE1/4 OF SECTION 1, TOWNSHIP
14 NORTH, RANGE 10 EAST OF THE 6TH, P.M.,
DOUGLAS COUNTY, NEBRASKA

EXHIBIT A, 2 of 2

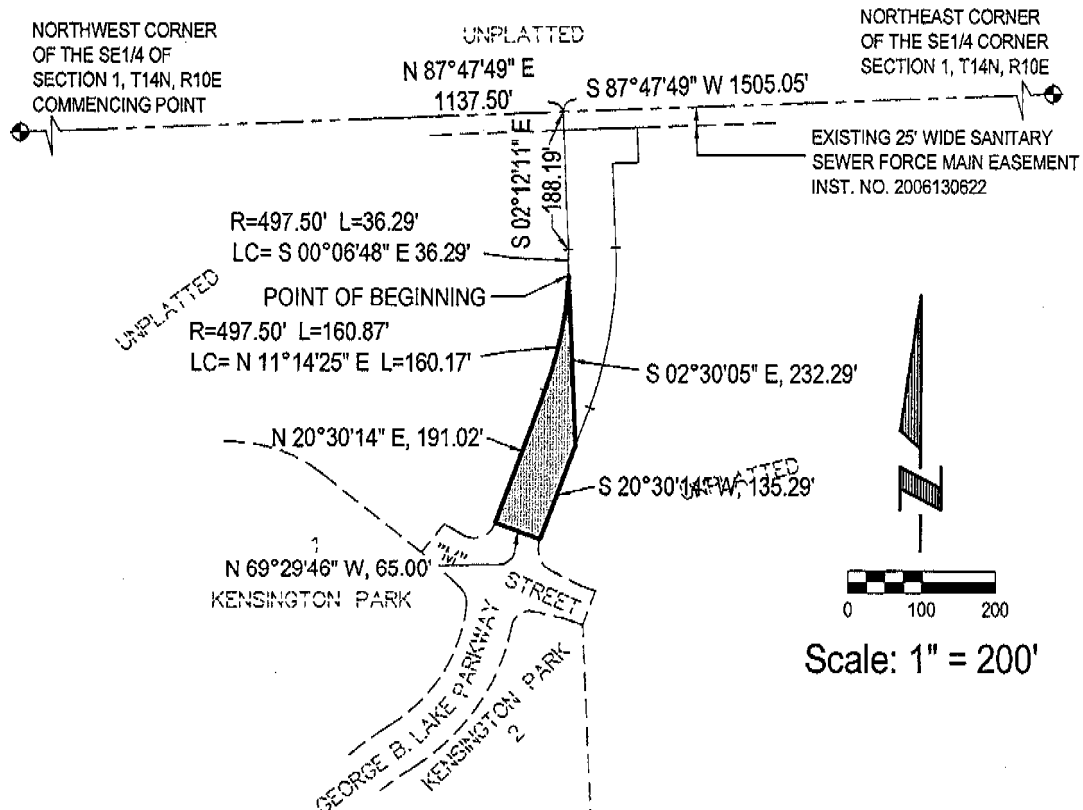
EXHIBIT "A"

LEGAL DESCRIPTION

A PERMANENT SANITARY SEWER EASEMENT LOCATED IN THE NW1/4 OF THE SE1/4 OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SE1/4 OF SECTION 1; THENCE N87°47'49"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID SE1/4 OF SECTION 1, A DISTANCE OF 1137.50 FEET; THENCE S02°12'11"E, A DISTANCE OF 188.19 FEET; THENCE SOUTHERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 497.50 FEET, A DISTANCE OF 36.29 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S00°06'48"E, A DISTANCE OF 36.29 FEET TO THE POINT OF BEGINNING; THENCE S02°30'05"E, A DISTANCE OF 232.29 FEET; THENCE S20°30'14"W, A DISTANCE OF 135.29 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF "M" STREET; THENCE N69°29'46"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF "M" STREET, A DISTANCE OF 65.00 FEET; THENCE N20°30'14"E, A DISTANCE OF 191.02 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 497.50 FEET, A DISTANCE OF 160.87 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N11°14'25"E, A DISTANCE OF 160.17 FEET TO THE POINT OF BEGINNING. C.T.

SAID PERMANENT SANITARY SEWER EASEMENT CONTAINS AN AREA OF 14,330 SQUARE FEET OR 0.329 ACRES, MORE OR LESS.



Scale: 1" = 200'



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
330 NORTH 117TH STREET OMAHA, NE 68154 PHONE: (402) 855-4700

Drawn by: TRH Chkd by: wpc 7-27-09 Chkd by:

Job No.: P2005.041.001 Date: 3-23-09 Sheet No.: 1 OF 1

PERMANENT SANITARY SEWER EASEMENT
NW1/4 OF THE SE1/4 OF SECTION 1, TOWNSHIP 14
NORTH, RANGE 10 EAST OF THE 6TH P.M.,
DOUGLAS COUNTY, NEBRASKA

ATTACHMENT TO A PERMANENT SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT WHEREIN STONE CREEK PLAZA, LLC, A NEBRASKA LIMITED LIABILITY COMPANY AND WESTERN SPRINGS LAND CORP., A NEBRASKA CORPORATION, APPEAR AS GRANTORS, AND EDWARD ROSE DEVELOPMENT COMPANY, L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY, APPEARS AS GRANTEE.

EXHIBIT B

Part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 1; and also part of the Northwest $\frac{1}{4}$ of said Southeast $\frac{1}{4}$ of Section 1; all located in Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said Southeast $\frac{1}{4}$ of Section 1;

thence North $02^{\circ}30'05''$ West (assumed bearing) along the West line of said Southeast $\frac{1}{4}$ of Section 1, a distance of 50.00 feet to the Point of Intersection of the North right-of-way line of West "Q" Road, and the East right-of-way line of a dedicated street, said point also being the Point of Beginning;

thence continuing North $02^{\circ}30'05''$ West along said West line of the Southeast $\frac{1}{4}$ of Section 1, said line also being said East right-of-way line of a dedicated street, a distance of 2158.52 feet;

thence North $87^{\circ}44'51''$ East, a distance of 659.41 feet;

thence Southeasterly on a curve to the right with a radius of 200.00 feet, a distance of 142.89 feet, said curve having a long chord which bears South $71^{\circ}47'06''$ East, a distance of 139.87 feet;

thence South $51^{\circ}19'03''$ East, a distance of 171.94 feet;

thence North $38^{\circ}40'57''$ East, a distance of 50.00 feet;

thence South $51^{\circ}19'03''$ East, a distance of 3.52 feet;

thence South $60^{\circ}23'31''$ East, a distance of 27.03 feet;

thence Northeasterly on a curve to the left with a radius of 30.00 feet, a distance of 51.89 feet, said curve having a long chord which bears North $70^{\circ}03'21''$ East, a distance of 45.66 feet;

thence North $20^{\circ}30'14''$ East, a distance of 1.60 feet;

thence South $69^{\circ}29'46''$ East, a distance of 65.00 feet;

thence Southeasterly on a curve to the left with a radius of 38.00 feet, a distance of 55.05 feet, said curve having a long chord which bears South 20°59'52" East, a distance of 50.36 feet;

thence South 62°29'58" East, a distance of 38.00 feet;

thence South 69°36'23" East, a distance of 4.34 feet;

thence South 02°30'05" East, a distance of 1449.90 feet;

thence Westerly on a curve to the left with a radius of 57.50 feet, a distance of 8.01 feet, said curve having a long chord which bears South 60°59'41" West, a distance of 8.00 feet;

thence Westerly on a curve to the right with a radius of 7.50 feet, a distance of 4.36 feet, said curve having a long chord which bears South 73°38'21" West, a distance of 4.29 feet;

thence Westerly on a curve to the right with a radius of 120.00 feet, a distance of 21.61 feet, said curve having a long chord which bears North 84°33'56" West, a distance of 21.58 feet;

thence North 79°24'23" West, a distance of 35.82 feet;

thence South 17°42'02" West, a distance of 50.00 feet;

thence South 65°11'34" East, a distance of 35.82 feet;

thence Easterly on a curve to the right with a radius of 120.00 feet, a distance of 21.15 feet, said curve having a long chord which bears South 60°08'36" East, a distance of 21.12 feet;

thence South 05°47'28" East, a distance of 6.68 feet;

thence South 42°19'05" West, a distance of 121.79 feet;

thence South 87°44'51" West, a distance of 454.69 feet;

thence South 02°13'09" East, a distance of 328.50 feet to a point on said North right-of-way line of West "Q" Road;

thence South 87°44'51" West, along said North right-of-way line of West "Q" Road, a distance of 558.05 feet to the Point of Beginning.

Said tract of land contains an area of 2,199,959 square feet or 50.504 acres, more or less.

CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEED OF TRUST

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, H. Daniel Smith, as Trustee, and Mutual of Omaha Bank, as Beneficiary, under that certain Deed of Trust and Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated May 19, 2009, and recorded May 28, 2009, as Instrument No. 2009053519 (the "Deed of Trust"), in the of the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Permanent Sanitary Sewer Easement and Temporary Construction Easement (the "Easement") such that the Deed of Trust shall be subject to said Easement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the foregoing Easement.

Executed this 5th day of October, 2009.

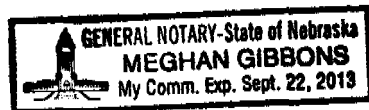
H. DANIEL SMITH, a Member of the Nebraska State
Bar Association, as Trustee,


By: 

H. Daniel Smith, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 5th day of Oct, 2009, by H. Daniel Smith, a member of the Nebraska State Bar Association, as Trustee.




Notary Public

MUTUAL OF OMAHA BANK, as Beneficiary,

By: [Signature]
Name: Jim Barrett
Its: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 5th day of October, 2009, by Jim Barrett, as Vice President Mutual of Omaha Bank, on behalf of said bank.



[Signature]
Notary Public