



MISC 2009109278



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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/08/2009 12:38:08.00



2009109278

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

### **PERMANENT STORM SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT**

Western Springs Land Corp., a Nebraska corporation (the "Grantor"), 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 storm sewer easement and right-of-way (the "Permanent Storm Sewer Easement") for the construction, maintenance and operation of a storm sewer, a storm water detention pond 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 storm sewer, storm water detention pond 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 Storm Sewer Easement and the Temporary Construction Easement are sometimes herein collectively referred to as the "Easements." The storm sewer, storm water detention pond and all appurtenances thereto are sometimes referred to as the "Improvements."

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 storm sewer, storm water detention pond and all appurtenances thereto at the will of the Grantee. The Grantor may, continue to use the portion of the surface of the Easements, not occupied by storm sewer or storm water detention pond 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 storm sewer, storm water detention pond 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 storm sewer line, any future storm sewer line, any future storm water retention or detention pond and any related easements (existing and/or future) within or connecting with the Permanent Storm Sewer Easement (the "Connection and Use Rights"). It is further agreed as follows:

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 Storm Sewer Easement by Grantor or Grantor's successors or assigns, without the express written approval of the Grantee,

35 361441

except, in those areas not utilized as a storm water detention pond, for landscaping or road, street or parking area surfacing or pavement which does not damage, interfere with or impinge on the functioning of, the storm sewer, storm water detention pond or Improvements. The Grantor's permitted Improvements and any surface plantings shall be maintained by Grantor, its 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 Storm Sewer Easement to be properly refilled, the surface grade restored and the premises left in a neat and orderly condition, except in the areas where the storm sewer pipe discharges to the surface, where the storm water detention pond is located, and, where surface storm sewer improvements are located.

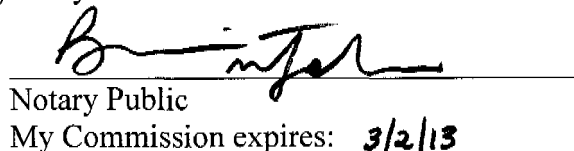
3. That Grantor for itself and its successors and assigns does confirm with the said Grantee and its assigns, the Grantor is well seized in fee of the real property on which the Easements are located and that it has the right to grant and convey the Easements and the Connection and Use Rights in the manner and form aforesaid, and that it 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 this instrument contains the entire agreement of the parties; that there are no other different agreements or understandings, between the Grantor and the Grantee or its agents; and, that the Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of the Grantee or its agents or employees, except as are set forth herein.

5. Grantor shall, at its sole cost and expense, timely undertake and complete all inspection, management, repair, maintenance and replacement of the Improvements 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. Grantor's obligations hereunder shall include any obligations that the City of Omaha or any other governmental body may require with respect to the Improvements, including, but not limited to: any Post-Construction Stormwater Management plans, features and appurtenances under Section I (I) of the Subdivision Agreement for Kensington Park dated June 30, 2009 (the Subdivision Agreement"); any Post-Construction Stormwater Management Plan Maintenance Agreement or requirements under Section I (J) of the Subdivision Agreement or any other agreements entered into with respect to Section I (J) of the Subdivision Agreement.

6. That the Easements and the Connection and Use Rights 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.

7. It is the intention of Grantor to develop the property adjacent to the Benefited Property at some time in the future with various public improvements, including, but not limited to permanent storm sewers and/or a permanent storm sewer retention/detention pond (the "Grantor's Storm Sewer") with adequate capacity to accept the storm drainage from the Benefited Property. Upon completion of Grantor's Storm Sewer, connection of the storm

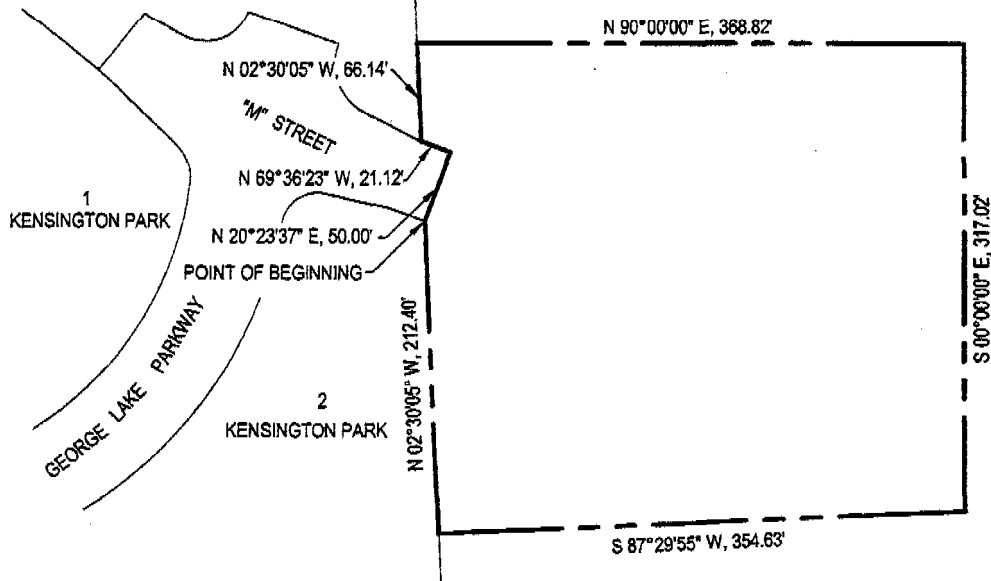


# EXHIBIT "A"

STONE CREEK PLAZA L.L.C.  
WARRANTY DEED INST. # 2006012185  
TRUSTEE'S DEED INST. # 2006012186  
TRUSTEE'S DEED INST. # 2006012184

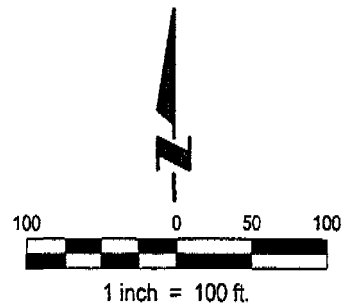
NORTH 1/2 OF THE SE 1/4  
SECTION 1, T14N, R10E

WESTERN SPRINGS LAND CORPORATION  
CORPORATION WARRANTY DEED  
INST. # 2006057412



## LEGAL DESCRIPTION

WESTERN SPRINGS LAND CORPORATION  
CORPORATION WARRANTY DEED  
INST NO. 2006057412



A TEMPORARY STORM SEWER AND DETENTION BASIN EASEMENT LOCATED IN THE NORTH 1/2 OF THE SE 1/4 OF SECTION 1, TOWNSHIP 14 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 2, KENSINGTON PARK, A SUBDIVISION LOCATED IN SAID SE 1/4 OF SECTION 1, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF "M" STREET; THENCE N20°23'37"E (ASSUMED BEARING) ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID "M" STREET, A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID "M" STREET; THENCE N89°36'23"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF "M" STREET, A DISTANCE OF 21.12 FEET; THENCE N02°30'05"W, A DISTANCE OF 66.14 FEET; THENCE N90°00'00"E, A DISTANCE OF 368.82 FEET; THENCE S00°00'00"E, A DISTANCE OF 317.02 FEET; THENCE S87°29'55"W, A DISTANCE OF 354.63 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 2, KENSINGTON PARK; THENCE N02°30'05"W ALONG SAID EASTERLY LINE OF LOT 2, KENSINGTON PARK, A DISTANCE OF 212.40 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 116,959 SQUARE FEET OR 2.685 ACRES, MORE OR LESS.



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
330 NORTH 11TH STREET OMAHA, NE 68154 PHONE (402) 886-4700

## PERMANENT STORM SEWER EASEMENT

Drawn by: TRH

Chkd by: *mac 7-13-09*

Chkd by:

Job No.: P2005.041.001

SHEET 1 OF 1

NW 1/4 OF THE SE 1/4 SECTION 1, T14N, R10E OF THE 6TH P.M.,  
DOUGLAS COUNTY, NEBRASKA

ATTACHMENT TO A PERMANENT STORM SEWER EASEMENT AND  
TEMPORARY CONSTRUCTION EASEMENT WHEREIN WESTERN SPRINGS  
LAND CORP., A NEBRASKA CORPORATION, APPEARS AS GRANTOR, 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 6<sup>th</sup> 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 Amendment and Restatement of 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. 2009053515 (the "Deed of Trust"), in the of the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Permanent Storm 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 5<sup>th</sup> day of October, 2009.

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

By: \_\_\_\_\_

H. Daniel Smith, Trustee

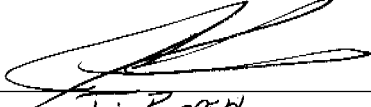
STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF DOUGLAS    )

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



Meghan Gibbons  
Notary Public

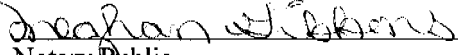
MUTUAL OF OMAHA BANK, as Beneficiary,

By:   
Name: Jim Barrett  
Its: Vice President

STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF DOUGLAS    )

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



  
Notary Public