

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made this 25th day of February, 2010, by and between **Bentwaters Partners Phase II, Limited Partnership**, a Michigan limited partnership, 6255 28th St., SE, Grand Rapids, MI 49546 ("Grantor") and **Bentwaters Partners, L.P.**, a Delaware limited partnership, 140 Monroe Center, Suite 400, Grand Rapids, MI 49503 ("Grantee"). The Grantor and Grantee are together hereinafter referred to as the "Parties."

RECITALS:

A. Grantor is the fee simple owner of real property more particularly depicted on the attached **Exhibit A** ("Grantor's Parcel"). Grantee is the fee simple owner of real property more particularly depicted on the attached **Exhibit B** ("Grantee's Parcel").

B. Grantor desires to grant to Grantee and Grantee's successors and assigns, a nonexclusive easement over that portion of Grantor's Parcel as depicted on attached **Exhibit C** (the "Easement Area") in order to permit the uses described herein.

C. This Agreement is exempt from county and state real estate transfer taxes pursuant to MCL §207.505(a) and MCL §207.526(a), being a transfer where the value of the consideration is less than One Hundred Dollars (\$100).

D. The term "Grantor" shall mean the Grantor and any and all successors or assigns of Grantor as the Owner or Owners of fee simple title to all or any portion of the Easement Area.

NOW, THEREFORE, in consideration of the foregoing Recitals, the execution of this Agreement by the Parties hereto, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereto agree as follows:

1. **Easement.** Subject to the terms and conditions of this Agreement, Grantor hereby grants to Grantee, for the benefit of Grantee and Grantee's successors and assigns, a nonexclusive easement over and across the Easement Area for the purpose of constructing, operating, inspecting, maintaining, repairing, altering, replacing and/or removing the storm water detention basin and all improvements related thereto ("Improvements").

2. **Encumbrances.** The easement herein granted is made subject to all of the terms and conditions of any recorded easement agreements that may affect the Easement Area, including any reciprocal easement agreements and/or utility easements that may be recorded subsequent to the recordation hereof, and all covenants, conditions, restrictions, and easements of record.

3. **Construction of Future Improvements.**

a. **Improvements.** Grantee shall be responsible for the construction of any additional improvements to the Easement Area as required by applicable governmental authorities. Prior to Grantee's construction of such Improvements, Grantee shall submit to Grantor for Grantor's prior written approval the proposed plans and specifications for the Improvements, the name of the proposed contractor that Grantee wishes to contract with to perform the construction of the Improvements, and the proposed schedule for the construction of the Improvements.

b. **Workmanship.** All construction of the Improvements shall be performed in a good and workmanlike manner, with first-class materials and in accordance with all applicable laws, rules, ordinances, and regulations.

c. **Cost and Liens.** Grantee shall pay all costs, expenses, liabilities, and liens arising out of or in any way connected with construction of the Improvements in the Easement Area. In the event any construction liens are filed against the Easement Area, or any part thereof, in connection with construction of the Improvements in the Easement Area, Grantee shall either pay or cause to be paid the same and have said liens discharged of record, promptly, or shall take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from the property.

d. **Cleanup.** During the construction of the Improvements, Grantee shall be responsible for regularly cleaning the Easement Area of dirt and debris caused by Grantee's construction activities. Upon completion of the construction of the Improvements, Grantee shall restore all areas disturbed during construction to their condition prior to construction.

4. **Maintenance of Improvements.** Grantee, and any successor or assignees of Grantee's interest in the Grantee Parcel, shall maintain the Improvements in the Easement Area in good order, condition, and repair, at the sole cost and expense of such party in possession of the Grantee Parcel.

5. **Insurance.** Throughout the term of this Agreement, Grantee, or its assignee or successor, shall procure and maintain or cause to be procured and maintain general and/or comprehensive public liability and property damage insurance against indemnified claims as described in paragraph 6 below for personal injury, death, or property damage occurring upon the Easement Area, with single limit coverage of not less than an aggregate of \$1 million including umbrella coverage, if any, naming the Grantor or any successor as additional insured.

6. **Indemnification.** Grantee agrees to indemnify and save Grantor, its members, agents, employees, licensees, contractors and invitees harmless from all claims, losses, costs and expenses (including, without limitation, reasonable attorney's fees) in connection with or arising out of the use of the Easement Area by Grantee or its agents, employees, licensees, contractors or invitees, except for any claims, losses, costs or expenses that arise as a result of the negligence of the Grantor or its members, agents, employees, licensees, contractors or invitees.

7. **Taxes and Assessments.** The Grantor and subsequent Owners of the Easement Area shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to the Easement Area.

8. **Remedies and Enforcement.**

a. **Legal and Equitable Remedies.** In the event of a breach or a threatened breach by any Party of any of the terms, covenants, restrictions, or conditions of this Agreement, the other Party(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts.

b. **Revocation and Third Party Approval.** In addition to all other remedies available at law or in equity, upon the failure of Grantee or its assignee or successor to cure a breach of this Agreement within ninety (90) days following written notice thereof by Grantor (unless, with respect to any such breach the nature of which cannot reasonably be cured within such ninety (90) day period, the defaulting Party commences such cure within such ninety (90) day period and thereafter diligently prosecutes such cure to completion within sixty (60) days after the expiration of the initial ninety (90) day cure period), the Owner of the Easement Area shall have the right to either (i) revoke the easement granted hereby by written notice to Grantee and its assignee or successor in possession or (ii) perform such obligation contained in this Agreement on behalf of such defaulting Party, and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof together with interest at the rate of one percent (1%) per month or the maximum legal rate, whichever is less. Notwithstanding the foregoing, in the event of an emergency or a blockage or material impairment of the easement rights, the non-defaulting Party(s) may immediately cure the same.

c. **Lien Rights.** Any claim for reimbursement, including interest as described above, and all costs and expenses including reasonable attorney's fees awarded to Grantor in enforcing any payment in any suit or proceeding under this Agreement, shall be assessed against Grantee in favor of Grantor and shall, to the extent allowed by law, constitute a lien (the "Assessment Lien") against the interest of Grantee in the Grantee Parcel until paid, effective upon the recording of a notice of lien with respect thereto in the office of the Register of Deeds; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, and (ii) all liens recorded prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described in this section shall be junior and subordinate to the Assessment Lien. Upon the timely curing by Grantee of any default for which a notice of lien was recorded, Grantor shall record an appropriate release of the notice

of lien and Assessment Lien.

d. **Remedies Cumulative.** The remedies specified in this Agreement shall be cumulative and in addition to all other remedies permitted at law or in equity.

9. **Term.** Except as provided in paragraph 8(b) above, the easements, covenants, conditions, and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Register of Deeds and shall remain in full force and effect thereafter, unless this Agreement is otherwise modified, amended, cancelled or terminated by the written consent of all then record Owners of the Easement Area and Grantee. Upon the termination of this Agreement as described above, Grantor may execute and record with the office of the Register of Deeds a release of this Agreement, which shall be conclusive evidence of the termination of this Agreement.

10. **Miscellaneous.**

a. **Attorney's fees.** If a party institutes any legal action or proceeding for the enforcement of any right or obligation of this Agreement, the prevailing party after final adjudication shall be entitled to recover its cost and reasonable attorney's fees incurred in the preparation and prosecution of such action or proceeding.

b. **Amendment.** The provisions of this Agreement may be modified or amended, in whole or in part, only by the written consent of the Owner of Easement Area and Grantee or its successor or assignee evidenced by a document that has been fully executed, acknowledged and recorded in the official records of the Register of Deeds.

c. **Consents.** Wherever in this Agreement the consent or approval of Grantor is required, unless otherwise expressly provided for in this Agreement, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall (i) be in writing; (ii) specify the section hereof which requires that such notice be given or that consent or approval be obtained; and (iii) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of Grantor under this Agreement, to be effective, must be given in writing.

d. **No Waiver.** No waiver of any default of any obligation by any party shall be implied from any omission by the other party to take any action with respect to such default.

e. **No Agency.** Nothing in this Agreement shall be deemed or construed by any party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Parties.

f. **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth in this Agreement shall, for the term of this Agreement, run with the land and create a benefit in favor of Grantee and its successor and assigns and a burden on the real property so burdened, and shall bind every person having any fee, leasehold, or other interest therein, and shall inure to the benefit of the respective Parties and their successors, assigns, heirs, and personal representatives.

g. **Grantee's Acceptance.** The grantee of the Easement Area or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Grantor or from a subsequent Owner of the Easement Area, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions, and obligations contained in this Agreement. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth in this Agreement with respect to the property so acquired by such grantee.

h. **Severability.** Each provision of this Agreement and the application thereof to the Easement Area, Grantee, and Grantee's successors and assigns are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained in this Agreement shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. If the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the Parties agree to promptly cause such legal description to be prepared.

i. **Time of Essence.** Time is of the essence in this Agreement.

j. **Entire Agreement.** This Agreement contains the complete understanding and agreement of the Parties with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded by this Agreement.

k. **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other Party. The notice addresses of the initial Parties to this Agreement are as set forth in the first paragraph hereof.

l. **Governing Law and Venue.** The laws of the State of Michigan shall govern the interpretation, validity, performance, and enforcement of this Agreement.

m. **Estoppel Certificates.** Each Party, within twenty (20) days of its receipt of a written request from another Party, shall from time to time provide the requesting Party a certificate binding upon the Party stating (i) to the best of such Party's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so, identifying such default or violation; and (ii) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

The Parties have executed this Agreement as of the date first written above. By signing this Agreement, the Parties acknowledge that they have read this document, they know its contents, they agree to its terms, and they are voluntarily signing it.

GRANTOR:

BENTWATERS PARTNERS PHASE II, LP

By: _____

Its _____

GRANTEE:

BENTWATERS PARTNERS, L.P.

By _____

Its _____

STATE OF MICHIGAN)

COUNTY OF _____)

This instrument was acknowledged before me in _____ County, Michigan, on February __, 2010, by _____ on behalf of Bentwaters Partners Phase II, LP, a Michigan limited partnership.

Notary Public, _____ County, Michigan
My commission expires: _____
Acting in _____ County, Michigan

STATE OF MICHIGAN)

COUNTY OF _____)

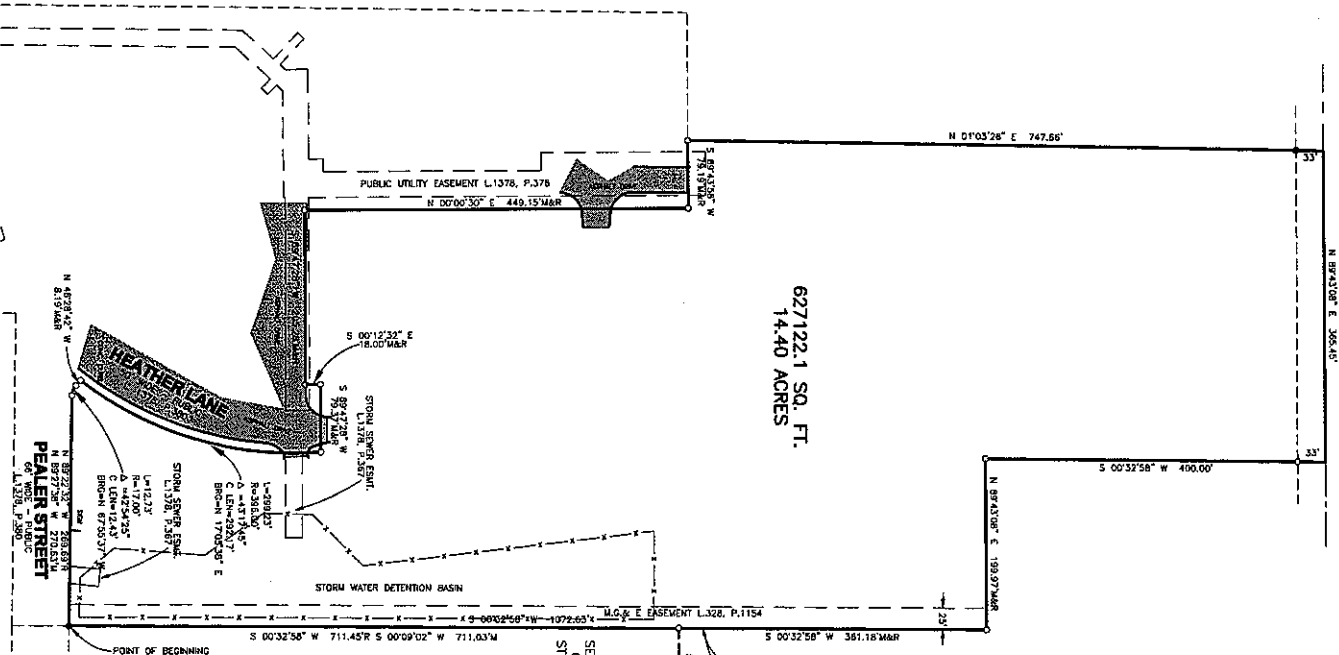
This instrument was acknowledged before me in _____ County, Michigan, on February ____, 2010, by _____ on behalf of Bentwaters Partners, L.P., a Delaware limited partnership.

Notary Public, _____ County, Michigan
My commission expires: _____
Acting in _____ County, Michigan

Drafted by and When Recorded return to:

ARNOLD STREET
as well as Public
N 87°43'08" E 366.45'

627122.1 SQ. FT.
14.40 ACRES



PROPERTY DESCRIPTION FROM FIRST AMERICAN TITLE COMMITMENT M-149420:

Part of the East 1/2 of Section 13, Town 6 South, Range 12 West, described as: Commencing at the East 1/4 corner of said Section, thence North 90 degrees 00 minutes 00 seconds West 289.10 feet to the East-West 1/4 line of said Section to the point of beginning; thence South 00 degrees 00 minutes 00 seconds West 177.77 feet; thence South 89 degrees 28 minutes 48 seconds West 110.20 feet; thence Northwesterly 323.53 feet along the arc of a 585.12 foot radius curve to the left, said curve having a central angle of 32 degrees 32 minutes 43 seconds; thence South 00 degrees 00 minutes 00 seconds West 141.11 feet; thence Northwesterly 69.48 feet along the arc of a 550.87 foot radius curve to the left, said curve having a central angle of 7 degrees 15 minutes 37 seconds; thence North 00 degrees 04 minutes 14 seconds East 812.64 feet; thence Southwesterly 69.48 feet along a 550.87 foot radius curve to the right, said curve having a central angle of 7 degrees 13 minutes 37 seconds and a chord bearing South 67 degrees 38 minutes 00 seconds East 69.44 feet; thence North 27 degrees 22 minutes 39 seconds East 141.11 feet; thence Southwesterly 323.53 feet along a 585.12 foot radius curve to the right, said curve having a central angle of 32 degrees 32 minutes 43 seconds; thence North 00 degrees 00 minutes 00 seconds East 110.20 feet to the point of beginning. Subject to highway right-of-way for Arnold Street over the Northerly 330.00 feet thereof.

Part of the East 1/2 of Section 13, Town 6 South, Range 12 West, described as: Commencing at the East 1/4 corner of said Section, thence North 90 degrees 00 minutes 00 seconds West 289.10 feet along the East-West 1/4 line of said Section to the point of beginning for this description; thence South 00 degrees 00 minutes 00 seconds West 177.77 feet; thence South 89 degrees 28 minutes 48 seconds West 110.20 feet; thence Northwesterly 323.53 feet along the arc of a 585.12 foot radius curve to the left, said curve having a central angle of 32 degrees 32 minutes 43 seconds; thence South 00 degrees 00 minutes 00 seconds West 141.11 feet; thence Northwesterly 69.48 feet along the arc of a 550.87 foot radius curve to the left, said curve having a central angle of 7 degrees 15 minutes 37 seconds and a chord of which bears North 00 degrees 04 minutes 14 seconds East 812.64 feet; thence North 27 degrees 22 minutes 39 seconds East 141.11 feet; thence Southwesterly 323.53 feet along a 585.12 foot radius curve to the right, said curve having a central angle of 32 degrees 32 minutes 43 seconds; thence North 00 degrees 00 minutes 00 seconds East 110.20 feet to the point of beginning.

SURVEYORS CERTIFICATION:
The undersigned hereby certifies to Bentwater Partners Phase II, L.P., First American Title Insurance Company and Metropolitan Title Company that this plat of survey and the survey on which it was based were made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005 and includes items 1, 2, 3, 4, 7, 8, 10, 14, 16, 17 and 18 of Table A thereof. Pursuant to the accuracy standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that, in my professional opinion, as a land surveyor registered in the State of Michigan, the Relative Horizontal Accuracy of this survey does not exceed that which is specified therein.

DATE: _____
Registration No. _____

BEARING BASIS:
WEST LINE OF SECTION 28, S00°19'02"E
ACCORDING TO SURVEY PREPARED BY JEFFREY C. BAKER
#49196, RECORDED LIBER 1378, PAGE 379.

**NOTES PERTAINING TO SCHEDULE B PART II ITEMS
FIRST AMERICAN TITLE COMMITMENT M-149420
EFFECTIVE DATE: JANUARY 19, 2010**

1. AS SHOWN, IF ANY, ON SURVEY.
2. AS SHOWN, IF ANY, ON SURVEY.
3. NOT SURVEY RELATED.
4. NOT SURVEY RELATED.
5. NOT SURVEY RELATED.
6. NOT SURVEY RELATED.
7. NOT SURVEY RELATED.
8. NOT SURVEY RELATED.
9. NOT SURVEY RELATED.
10. NOT SURVEY RELATED.
11. AS SHOWN, IF ANY, ON SURVEY.
12. NOT SURVEY RELATED.
13. MICHIGAN GAS & ELECTRIC L.237, P.252, PLOTTED AS RECORDED.
14. MICHIGAN GAS & ELECTRIC L.476, P.152, PLOTTED AS RECORDED.
15. MICHIGAN GAS & ELECTRIC L.197, P.222, PLOTTED AS RECORDED.
16. MICHIGAN GAS & ELECTRIC L.166, P.203, PLOTTED AS RECORDED.
17. MICHIGAN GAS & ELECTRIC L.166, P.203, PLOTTED AS RECORDED.
18. DEVELOPMENT AGREEMENT, NOT SURVEY RELATED.
19. DECLARATION OF EASEMENTS L.1233, P.994, CONTAINS BLANKET CROSS ACCESS EASEMENTS AND ARE NOT PLOTTABLE.
20. SPECIAL ASSESSMENT DISTRICT L.1386, P.142, NOT SURVEY RELATED.
21. EASEMENT AGREEMENT L.1378, P.376, PLOTTED AS SHOWN.
22. RIGHT OF WAY L.1378, P.380, PLOTTED AS SHOWN.
23. SIGNMENT AGREEMENT L.1378, P.380, PLOTTED AS SHOWN.
24. SIGNMENT AGREEMENT L.1378, P.380, PLOTTED AS SHOWN.
25. DECLARATION OF EASEMENTS L.1233, P.994, CONTAINS BLANKET CROSS ACCESS EASEMENTS AND ARE NOT PLOTTABLE.

FLOOD STATUS:
BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE "X", AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN, OF THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 260206 0001 C, WHICH BEARS AN EFFECTIVE DATE OF DECEMBER 15, 1990 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA.

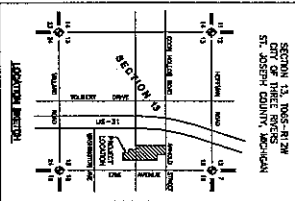
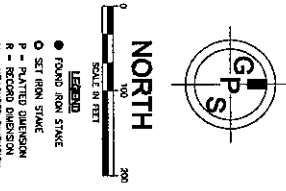


EXHIBIT A



ALTA/ACSM LAND TITLE SURVEY
PART OF THE EAST 1/2 OF
SECTION 13, T06S R12W
CITY OF THREE RIVERS
ST. JOSEPH COUNTY, MICHIGAN

MIEDEMA AUCTIONEERING, INC.
601 GORDON INDUSTRIAL CT., SW
BYRON CENTER, MICHIGAN
PHONE: 1-800-627-8243
FAX: 616-538-5230

GPS PROFESSIONAL SURVEYING, P.C.
714 Chubbuck Ave. NE
Rochester, MI 48311
(616) 868-6596 Voice
(616) 868-0453 Fax
Copyright 2010 ©
By Order Prepared
Survey, LLC

PROJECT NUMBER
2010-07

DATE
2010-07

REFERENCE NUMBER
1

SCALE
AS SHOWN

EXHIBIT**Legal Description of Bentwaters Parcel**

Part of the East 1/2 of Section 13, T6S, R12W, City of Three Rivers, St. Joseph County, Michigan, described as:

Commencing at the East 1/4 corner of said Section; thence N90°00'00"W 289.10 feet along the East-West 1/4 line of said Section; thence S00°32'58"W 711.45 feet to the Point of Beginning; thence S00°32'58"W 33.01 feet; thence S00°28'29"W 33.00 feet; thence N89°22'32"W 366.44 feet; thence S00°32'05"W 410.29 feet; thence N89°22'55"W 365.79 feet; thence N01°00'05"E 412.71 feet; thence N01°03'26"E 777.40 feet; thence N89°43'56"E 229.16 feet; thence S00°00'30"E 449.15 feet; thence N89°47'28"E 205.28 feet; thence N00°12'32"W 18.00 feet; thence N89°47'28"E 79.37 feet; thence Southwesterly 299.23 feet along a 396.00 foot radius curve to the right, said curve having a central angle of 43°17'43", and a chord bearing S17°05'38"W 292.17 feet; thence S46°28'42"E 8.19 feet; thence Southeasterly 12.73 feet along a 17.00 foot radius curve to the left, said curve having a central angle of 42°53'51", and a chord bearing S67°55'37"E 12.43 feet; thence S89°22'32"E 269.69 feet to the Point of Beginning. Contains 10.04 acres. Subject to easements, restrictions, and rights-of-way of record.

EXHIBIT B-1

**CITY OF
THREE RIVERS**

**Section and
Page Numbers**

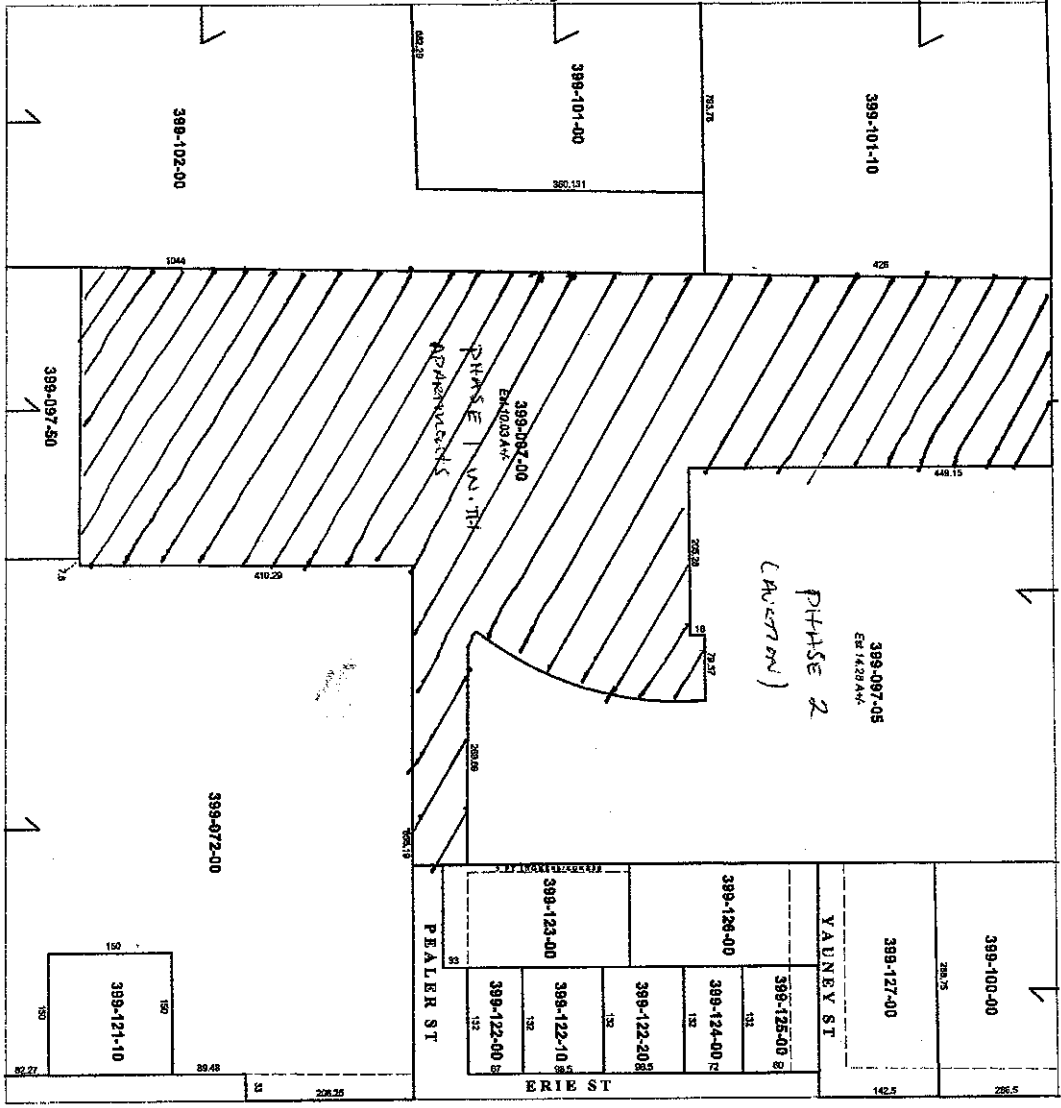
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REVISED
6 JUNE 85
03/27/97
08/10/05
08/25/05
01/24/08
01/17/08
09/11/09

0 100 200
feet

St Joseph County
Townships

TOWNSHIP	NAME	NUMBER	SECTION
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ALLEN	ALLEN	4	4
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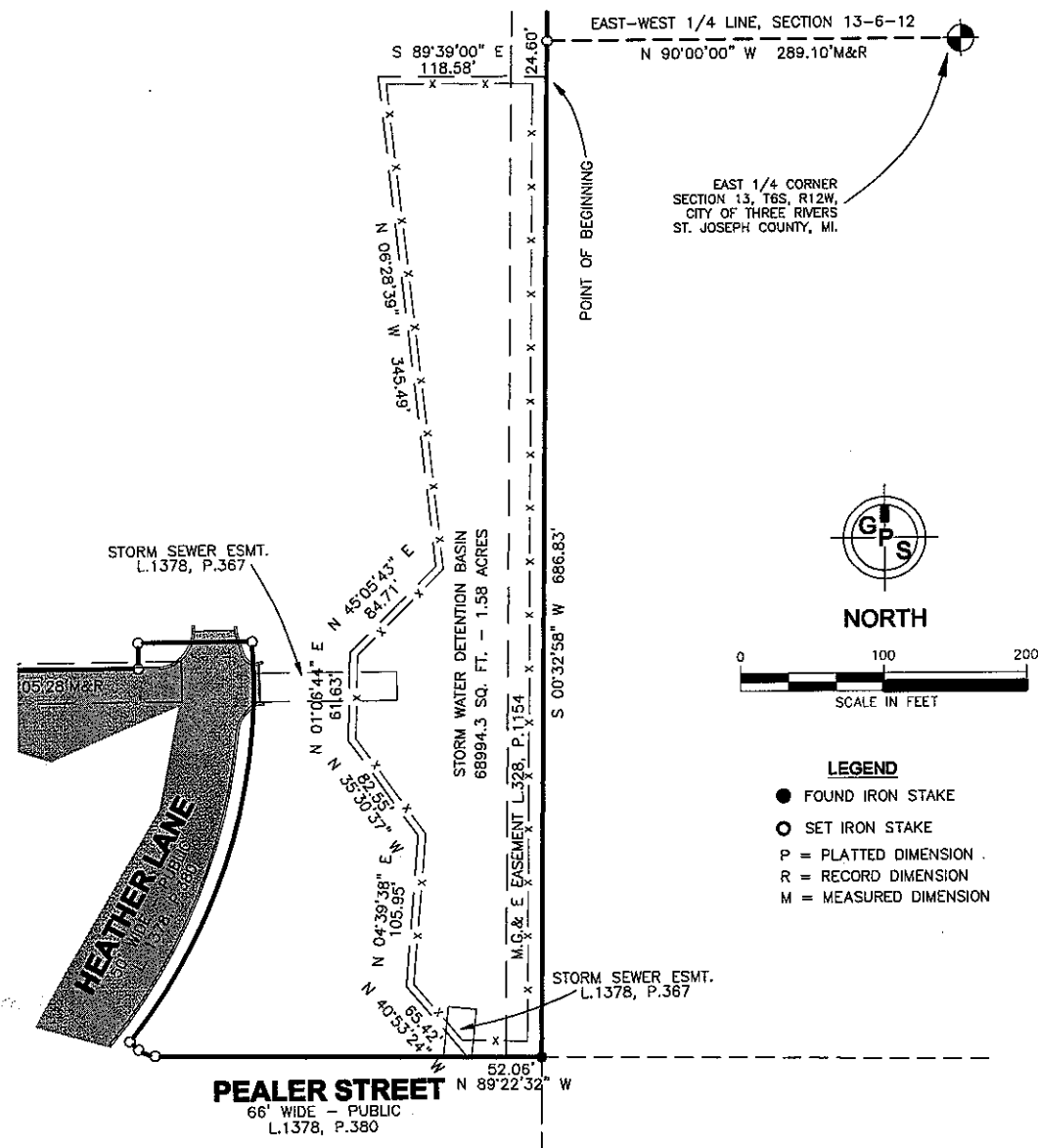
PARCEL PREFIX 75-051-
Subdivision Boundary
City Boundary

St Joseph County Land Reserve Center
Geographic Information System Department
This map is for informational purposes only.
It does not represent a property survey.

*Property benefited
by easement*

EXHIBIT B-2

DRAINAGE EASEMENT DESCRIPTION




LEGAL DESCRIPTION OF DRAINAGE EASEMENT:

Part of the East 1/2 of Section 13. Town 6 South, Range 12 West, described as: Commencing at the East 1/4 corner of said Section; thence N90°00'00"W, 289.10 feet along the East-West 1/4 line of said Section; thence S00°32'58"W, 24.60 feet to the Point of Beginning; thence continuing S00°32'58"W, 686.83 feet to the North line of Pealer Street; thence N89°22'32"W, 52.06 feet along said North line; thence N40°53'24"W, 65.42 feet; thence N4°39'38"E, 105.95 feet; thence N35°30'37"W, 82.55 feet; thence N1°06'44"E, 61.63 feet; thence N45°05'43"E, 84.71 feet; thence N6°28'39"W, 345.49 feet; thence S89°39'00"E, 118.58 feet to the Point of Beginning, containing 1.58 acres.

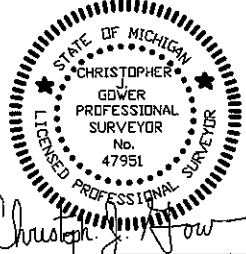
CLIENT: MIEDEMA AUCTIONEERING, INC. SID MIEDEMA 601 GORDON IND. DR., SW BYRON CENTER, MI	
JOB NO.	2010-07
DATE:	2/22/2010
REVISED:	-
OFFICE:	CJG
FIELD:	-
SHEET:	1 OF 1

PROPERTY LOCATION:
PART OF SECTION 13, T06S - R12W
CITY OF THREE RIVERS, ST. JOSEPH COUNTY, MICHIGAN



GOWER PROFESSIONAL SURVEYING, P.C.

7144 Childsdate Avenue, NE (616) 863-9508 VOICE
Rockford, MI 49341 (616) 866-6483 FAX



Christopher J. Gower
CHRISTOPHER J. GOWER, P.S.
MICHIGAN No. 47951

EXHIBIT C