# **CITY of NOVI CITY COUNCIL**



Agenda Item G June 23, 2008

SUBJECT: Approval of a request from Chase Bank for acceptance of a hold harmless agreement related to an access drive for property located at the northeast corner of Grand River Avenue and Beck Road.

SUBMITTING DEPARTMENT: Community Development - Planning

# CITY MANAGER APPROVAL

## BACKGROUND INFORMATION

Chase Bank has developed property at the northeast corner of Grand River and Beck and is currently operating under a Temporary Certificate of Occupancy. The property owner to the north of the Chase Bank development has asserted that Chase Bank has no access rights over an existing access drive located to the north of the bank. Chase Bank asserts that it does have the right to use the existing access drive, and in accordance with its approved site plan, has connected a driveway to an access drive on the parcel to the north. In addition to the access drive to the north, two additional points of access are provided from Chase Bank to the public rights of way. There is no City ordinance standard requiring the applicant to connect to the access drive to the north.

The City Attorney's office has provided a letter explaining the situation in further detail. A Hold Harmless Agreement has been signed by representatives from Chase Bank to protect the City from any liability relating to potential disputes over the rights to the access drive. The Agreement states that in the event that any final judgment or resolution determines that Chase Bank has no access rights to the disputed drive and if this final judgment requires the elimination of the access, Chase Bank has agreed to amend the site plan to eliminate the disputed drive and will physically eliminate access to this drive.

**RECOMMENDED ACTION:** Approval of a request from Chase Bank for acceptance of a hold harmless agreement related to an access drive for property located at the northeast corner of Grand River Avenue and Beck Road.

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Mayor Landry	
Mayor Pro Tem Capello	
Council Member Crawford	
Council Member Gatt	

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Council Member Margolis			
Council Member Mutch			
Council Member Staudt			

## LETTER FROM CITY ATTORNEY'S OFFICE

January 2, 2008

30903 Northwestern Highway P.O. Box 3040 Farmington Hills, MI 48333-3040 Tel: 248-851-9500 Fax: 248-851-2158 www.secrestwardle.com

SECREST

WARDLE

Elizabeth M. Kudha Direct: 248-539-2846 blaudla@sccrestwardle.com Barbara McBeth, Deputy Community Development Director CITY OF NOVI 45175 West Ten Mile Road Novi, Michigan 48375

> Re: Chase Bank (Beck and Grand River) Access Drive Hold Harmless Our File No. 660121 NOV1 SP06-27

Dear Ms. McBeth:

As you are probably aware, the property owner of the parcel to the north of parcel 22-15-176-016, CP Novi Center, LLC, which is the parcel north of the parcels leased by Chase Bank (22-15-176-016 and 22-16-176-016), has asserted that Chase Bank has no access rights over an existing access drive over that northern parcel. Chase Bank asserts that it does have a right to access the existing access drive and has, in accordance with its approved site plan, connected a driveway access from parcel 22-16-176-016, over 22-15-176-016, to the access drive on the northern parcel. It should be noted that the disputed access drive was not a City ordinance requirement but was optional and included on the site plan at the desire of the applicant, Chase Bank.

Because the two parties' claims are at odds, and we have not made a determination regarding the rights of the parties to the access drive, we have requested, and Chase Bank has provided, a Hold Harmless Agreement to protect the City from any liability relating to dispute over the rights to the access drive. In addition to providing for reimbursement for claims, demands, costs or judgments against the City relating to the disputed access drive, the Hold Harmless Agreement indicates that in the event of a final unappealable judgment declaring Chase Bank had no access rights, and Chase is unable to negotiate an additional easement for access rights, then Chase will submit an application to amend the site plan to eliminate the disputed access drive and will eliminate the physical improvement connecting to the drive at its own expense.

Subject to the Planning Department obtaining Engineering confirmation of the accuracy of the legal descriptions attached to the Hold Harmless Agreement, we approve the format and content of the Agreement. If Planning is satisfied with the property descriptions attached, the Hold Harmless Agreement should be Barbara McBeth, Deputy Community Development Director January 2, 2008 Page 2

placed on an upcoming City Council Agenda for approval. Once approved, it should be executed by the City and may (but need not be) recorded with the Oakland County Register of Deeds. We are enclosing three (3) duplicate originals of the Hold Harmless Agreement with the City Clerk's copy of this letter.

Should you have any questions or concerns in regard to the above issues, please feel free to contact us. (

1. . . Very traly yours, ELIZABETH M. KUDLA

EMK

Enclosure

C: Maryanne Cornelius, Clerk (w/Original Enclosures) Mark Spencer, Planner (w/Enclosures) Benjamin Croy, Civil Engineer (w/Enclosures) Thomas R. Schultz, Esquire (w/Enclosures)

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## HOLD HARMLESS AGREEMENT

### HOLD HARMLESS AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of December, 2007, by and between JPMorgan Chase Bank, National Association, a national banking association, whose address is 131 South Dearborn Avenue, 3rd Floor, Mail Code IL1-0522, Chicago, IL 60603, (the "Applicant") and the CITY OF NOVI, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (the "City").

WHEREAS, Applicant is ground lessee of certain real property (the "Property") located within the City of Novi, County of Oakland, State of Michigan, legally described as set forth in the attached and incorporated Exhibit A; Sidwell Nos. 22-16-176-016 and 22-16-176-015, hereinafter referred to as the "Property" and

WHEREAS, Applicant received a Temporary Certificate of Occupancy for the bank building constructed on the Property;

WHEREAS, the approved final site plan for the Property (the "Site Plan") includes three ingress and egress drives providing general access to the Property. The northernmost access drive (the "Disputed Drive"), along the Beck Road frontage, extends, in part, onto the adjacent parcel (the "Adjacent Property"), owned by a third party, CP Novi Center.

WHEREAS, representatives of CP Novi Center have verbally indicated to City staff that it is their interpretation of an existing access easement that the Property has only limited rights to use the ingress egress drive and that the limited rights do not include rights for the Applicant's land use as a commercial banking establishment. The City has not been provided with a copy of the disputed ingress/egress easement. A pictorial (survey) of the location has been provided and highlighted by CP Novi Center's Attorney. The City has not analyzed, given the limited amount of information provided, whether CP Novi Center's assertion regarding limited access rights has any basis. Applicant asserts that, as of the time of the issuance of the Temporary Certificate of Occupancy, no written objection to the use of the Disputed Drive had been provided to Applicant by CP Novi Center.

WHEREAS, the Owner of the Property and Applicant both assert that the existing ingress and egress easement provides all of the access rights necessary to construct and use the Disputed Drive, as depicted in the Site Plan.

WHEREAS, the Disputed Drive is not required by City Ordinance.

WHEREAS, Applicant desires to proceed with the opening of the Disputed Drive, rather than amend the Site Plan to eliminate the Disputed Drive based on the verbal assertions of CP Novi Center.

WHEREAS, Applicant has indicated that it will indemnify and hold harmless the City from all related costs and judgments arising from any dispute to determine the Property's right to access the Disputed Drive pursuant to the existing easement.

WHEREAS, Applicant agrees to amend the Site Plan to eliminate the Disputed Drive and physically eliminate the Property's access to the Disputed Drive in the event any final, unappealable judgment, order, agreement, settlement or other resolution determines that Applicant has no access rights to the Disputed Drive and requires the elimination of the Property's access to the Disputed Drive.

NOW, THEREFORE, in consideration of the City issuing a TCO for the bank building on the Property, Applicant understands and agrees as follows:

1. Applicant agrees to and hereby releases, indemnifies, and holds harmless the City, its consultants, employees, agents, representatives, or designees (hereinafter collectively "the City") from any and all claims, demands, causes of action, or damages of any kind or nature, known or unknown, brought by the Applicant, the current or any successor owner of the Adjacent Property, or CP Novi Center, arising out of, or in any way associated with, any dispute, disagreement, claim or demand relating to Applicant's access to the Disputed Drive. This includes, without limitation, claims, demands, costs or judgments against the City, whether such liability, loss or damage is known or unknown, foreseeable or unforeseeable, due or claimed to be due to the negligence of the City. Provided, however, the City will provide Applicant at least five (5) business days prior written notice before it incurs any costs for which it will seek reimbursement for from Applicant pursuant to this Agreement.

2. In the event a final, unappealable judgment or order is entered, or any settlement or other agreement is made, which prohibits Applicant from using the Disputed Drive, same shall not be deemed to render the Property non-complaint with applicable City codes, rather, Applicant agrees to provide to the City, within thirty (30) days of date of such judgment, settlement or other agreement, subject to force majeure, an amended site plan, eliminating the Disputed Drive, but in all other ways identical to the Site Plan (the "Amended Site Plan"). The City will approve and file the Amended Site Plan, at the earliest opportunity, and the City will not require additional improvements, construction, easements, compensation or other agreements from the Applicant or the owner of the Property, as a condition of such approval and filing or otherwise. Upon the approval and filing of the Amended Site Plan, the City will return to the Applicant any and all bonds or funds held by the City as security for the completion of any improvements relating to the Disputed Drive.

3. This Agreement shall run with the land, and shall be binding upon the Applicant and its successors, assigns, heirs and personal representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

		CITY	
		CITY OF NOVI, a Michigan municipal corporation	
		Ву:	
		Its:	
STATE OF MICHIGAN	)		
COUNTY OF OAKLAND	)		
Subscribed to and acl	knowledged be	fore me this day of, 2007.	
		Notary Public	N
• • • •	• .	County, Michigan Acting in Oakland County My Commission Expires:	

{Signatures continue on following page}

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### APPLICANT

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association

Gregg A. Vogel Sanior Vice President

STATE OF ILLINOIS ) ) COUNTY OF COCK ) Subscribed to and acknowledged before me this 26 day of Secomber , 2007. winsor Notary Public "OFFICIAL SEAL" Joi Johnson THLINOR COOK Notary Public, State of Illinois County, Oakland CEK Cook County My Commission Expires: January 25, 2010 My Commission Expires Jan. 25, 2010 • . • • • •

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## EXHIBIT A "THE PROPERTY"

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### LEGAL DESCRIPTION - SUBJECT PARCEL

LAND IN THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS:

PART OF THE NORTHWEST 1/4 OF SECTION 16, TOWN 1 NORTH, RANGE & EAST, MICHIGAN, DESCRIBED AS; BEGINNING AT A POINT ON THE NORTHERLY LINE OF GRAND RIVER AVENUE, DISTANT SOUTH 70'53'34" EAST, 54.33 FEET AND NORTH 00'36'00" EAST 62.73 FEET FROM THE INTERSECTION OF CENTERLINE OF SAID ROAD WITH THE WEST SECTION LINE; THENCE SOUTH 70'53'34" EAST 200.00 FEET; THENCE NORTH 00'36'00" EAST 240.48 FEET; THENCE NORTH 70'53'34" WEST 200.00 FEET; THENCE SOUTH 00'36'00" WEST 240.48 FEET TO THE POINT OF BEGINNING.

### LEGAL DESCRIPTION - ADDITIONAL PROPERTY

LAND IN THE CITY OF NOVI. OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS:

PART OF THE NORTHWEST 1/4 OF SECTION 16, TOWN 1 NORTH, RANGE 8 EAST, MICHIGAN, DESCRIBED AS; COMMENCING AT A POINT ON THE NORTHERLY LINE OF GRAND RIVER AVENUE, DISTANT SOUTH 70'53'34" EAST, 64.33 FEET AND NORTH 00'36'00" EAST 62.73 FEET FROM THE INTERSECTION OF CENTERLINE OF SAID ROAD WITH THE WEST SECTION LINE; THENCE NORTH 00'36'00" EAST 230.48 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00'36'00" EAST 55 FEET; THENCE SOUTH 70'53'34" EAST 200.00 FEET; THENCE SOUTH 00'36'00" WEST 55.00 FEET; THENCE NORTH 70'53'34" WEST 200.00 FEET TO THE POINT OF BEGINNING.

#### LEGAL DESCRIPTION - COMBINED

LAND IN THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS:

PART OF THE NORTHWEST 1/4 OF SECTION 16, TOWN 1 NORTH, RANGE 8 EAST, MICHIGAN, DESCRIBED AS; BEGINNING AT A POINT ON THE NORTHERLY LINE OF GRAND RIVER AVENUE, DISTANT SOUTH 70°53'34" EAST, 64.33 FEET AND NORTH 00°36'00" EAST 62.73 FEET FROM THE INTERSECTION OF CENTERLINE OF SAID ROAD WITH THE WEST SECTION LINE; THENCE SOUTH 70°53'34" EAST 200.00 FEET; THENCE NORTH 00°36'00" EAST 285.48 FEET; THENCE NORTH 70°53'34" WEST 200.00 FEET; THENCE SOUTH 00°36'00" WEST 285.48 FEET TO THE POINT OF BEGINNING.

HOTE: CURRENT TITLE COMMITMENT NOT AVAILABLE FOR ENHER PARCEL AT THE TIME OF PREPARATION. THE ABOVE DESCRIPTIONS ARE FOR INFORMATION PURPOSES ONLY AND SHOULD NOT BE UTILIZED FOR PROPERTY IDENTIFICATION.

PREPARED BY WILCOX PROFESSIONAL SERVICES, LLC 37987 INTERCHANGE DRIVE FARMINGTON HILLS, MI 48335 PHONE: (248) 478-3690

IX IX IX	CHASE - BECK & GRAND RIVER	DATE 08-03-06	Wilcox
	LEGAL DESCRIPTIONS	drn MMM	Professional Services
	CITY OF NOVI, OAKLAND COUNTY, MICHIGAN	CHD ACA	AN ISO 9001 CERTIFIED COMPANY
7 7	CLIENT: NUDELL ARCHITECTS	SCALE NTS	F.B. SHEET PROJECT NO. PG. 1 OF 1 11854.00084

## EXHIBIT B The "Adjacent Property"

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## PROPERTY DESCRIPTION

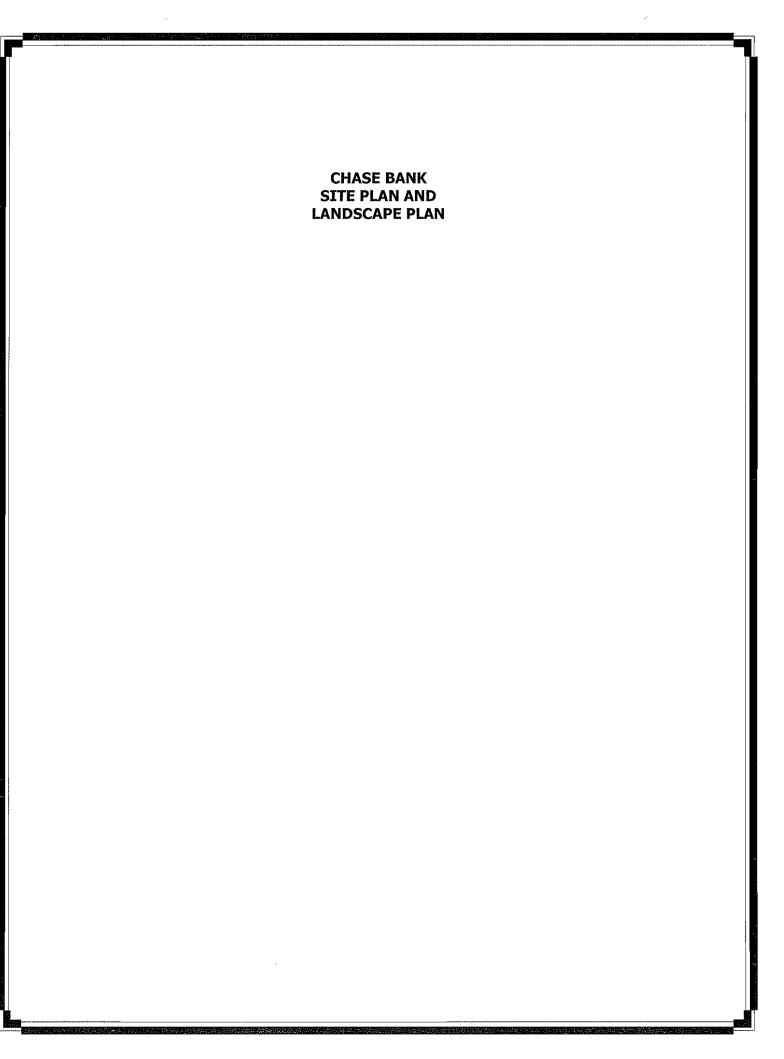
#### PARCEL A

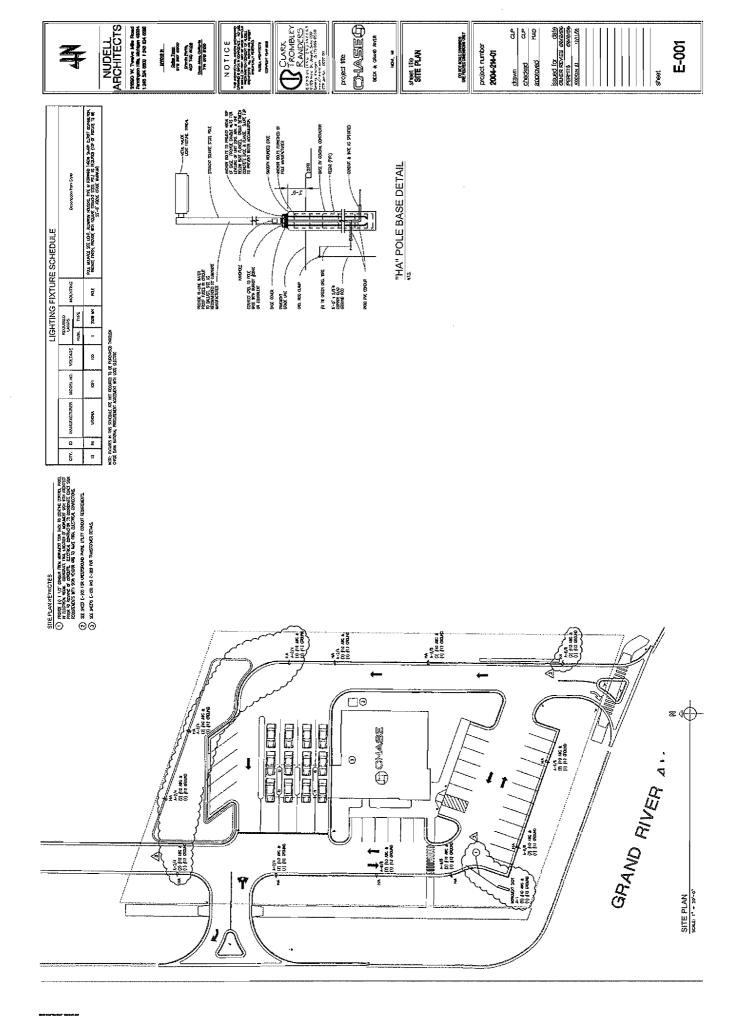
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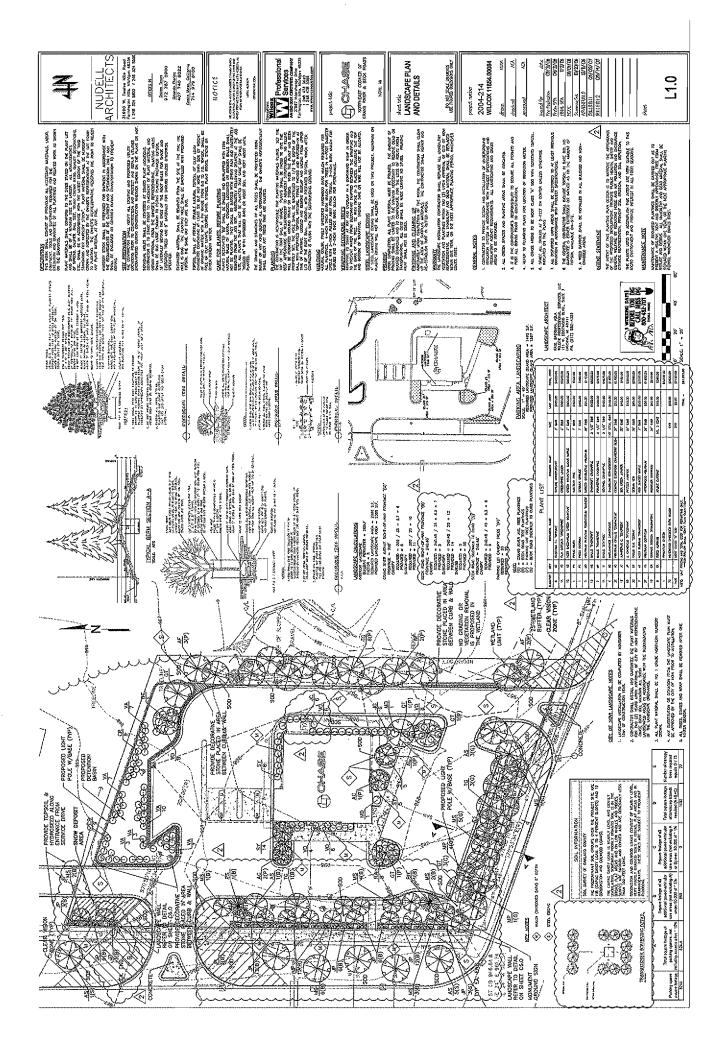
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PART OF LOTS 1 AND 2 OF WILSON FARMS SUBDIVISION. ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 63, PAGE 34 LYING SOUTH OF 1-96 HIGHWAY AND A PARCEL OF LAND IN THE NORTHWEST 1/4 OF SECTION 16, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOV, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 16; THENCE SOUTH OD DEGREES 32 MINUTES 36 SECONDS WEST (SOUTH OD DEGREES 36 MINUTES OO SECONDS WEST MEASURED) 1647,61 FEET ALONG THE WEST LINE OF SAID SECTION 16; THENCE SOUTH 70 DEGREES 53 MINUTES 34 SECONDS EAST (SOUTH 70 DEGREES 50 MINUTES 10 SECONDS EAST MEASURED) 264.33 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF GRAND RIVER AVENUE (100 FEET WIDE); THENCE NORTH OD DEGREES 32 MINUTES 36 SECONDS EAST (NORTH CO DEGREES 35 MINUTES OD SECONDS EAST MEASURED) PARALLEL WITH THE WEST LINE OF SAID SECTION 16, 240.48 FEET; THENCE SOUTH 70 DEGREES 53 MINUTES 34 SECONDS EAST (SOUTH 70 DEGREES 50 MINUTES 10 SECONDS EAST MEASURED) PARALLEL WITH GRAND RIVER AVENUE, 241.70 FEET (241.86 FEET MEASURED) TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH DD DEGREES 32 MINUTES 36 SECONDS EAST (NORTH OD DEGREES 36 MINUTES OD SECONDS EAST MEASURED), PARALLEL WITH THE WEST LINE OF SAID SECTION 16, 274.10 FEET (241.02 FEET MEASURED) TO THE CENTERLINE OF AN EASEMENT FOR INGRESS AND EGRESS (60 FEET WIDE); THENCE ALONG SAID CENTERLINE SOUTH 78 DEGREES 38 MINUTES 11 SECONDS EAST (SOUTH 76 DEGREES 39 MINUTES 57 SECONDS EAST MEASURED) 337.25 FEET (337.54 FEET MEASURED); THENCE NORTH OD DEGREES 30 MINUTES 24 SECONDS EAST (NORTH OD DEGREES 32 MINUTES 16 SECONDS EAST NEASURED) 31.05 FEET (30.76 FEET MEASURED) TO A POINT ON THE NORTH LINE OF SAID 60 FOOT EASEMENT; THENCE SOUTH 71 DEGREES 26 MINUTES 44 SECONDS EAST (SOUTH 71 DEGREES 23 MINUTES 18 SECONDS EAST MEASURED) ALONG SAID NORTH LINE 211.20 FEET (211.16 FEET MEASURED); THENCE NORTH OD DEGREES 30 MINUTES 23 SECONDS EAST (NORTH OD DEGREES 32 MINUTES 46 SECONDS EAST MEASURED) PARALLEL WITH THE EASTERLY LINE OF LOT 1, WILSON FARMS SUBDIVISION (653.42 FEET MEASURED); (THENCE SOUTH 71 DEGREES 22 MINUTES 18 SECONDS EAST 324.97 FEET MEASURED); THENCE ALONG SAID EASTERLY LINE AND IT'S EXTENSION THEREOF, SOUTH OO DEGREES 30 MINUTES 23 SECONDS WEST (SOUTH DO DEGREES 33 MINUTES 47 SECONDS WEST MEASURED) 999.70 FEET; THENCE NORTH 70 DEGREES 53 MINUTES 34 SECONDS WEST (NORTH 70 DEGREES 50 MINUTES 10 SECONDS WEST MEASURED), PARALLEL TO GRAND RIVER AVENUE, 885.11 FEET TO THE POINT OF BEGINNING. ALSO DESCRIBED FOR TAX PURPOSES AS:

TOWN I NORTH, RANGE 8 EAST, SECTION 16, WILSON FARMS SUBDIVISION, THAT PART OF LOTS 1 AND 2 LYING SOUTH OF 1-96 HIGHWAY AND PART OF THE NORTHWEST 1/4 ALL DESCRIBED AS: BEGINNING AT THE SOUTH OF 1-96 HIGHWAY AND PART OF THE NORTHWEST 1/4 ALL DESCRIBED AS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1; THENCE SOUTH OD DEGREES 33 MINUTES 52 SECONDS WEST 506.70 FEET; THENCE NORTH 70 DEGREES 48 MINUTES 37 SECONDS WEST 885.29 FEET; THENCE NORTH 00 DEGREES 43 MINUTES 24 SECONDS EAST 273.80 FEET; THENCE SOUTH 76 DEGREES 39 MINUTES 57 SECONDS EAST 337.54 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 16 SECONDS EAST 30.76 FEET; THENCE SOUTH 71 DEGREES 23 MINUTES 16 SECONDS EAST 211.20 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 46 SECONDS EAST 254.60 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 22 SECONDS EAST 324.60 FEET; THENCE SOUTH 70 DEGREES 34 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 22 SECONDS EAST 34.60 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 20 SECONDS EAST 354.60 FEET; THENCE SOUTH 70 DEGREES 34 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 20 SECONDS EAST 354.60 FEET; THENCE SOUTH 71 DEGREES 35 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 24 SECONDS EAST 354.60 FEET; THENCE SOUTH 71 DEGREES 35 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 71 DEGREES 24 MINUTES 55 SECONDS EAST 554.60 FEET; THENCE SOUTH 75 DEGREES 35 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 75 DEGREES 35 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 75 DEGREES 35 MINUTES 55 SECONDS WEST 653.63 FEET; THENCE SOUTH 75 DEGREES 75 DEGREE 00 DEGREES 33 MINUTES 52 SECONDS WEST 493.33 FEET TO THE POINT OF BEGINNING. 







MAP OF CHASE BANK PROPERTY IN RELATION TO EASEMENT/ACCESS DRIVE LOCATION

