



CITY of NOVI CITY COUNCIL

Agenda Item J
April 27, 2009

SUBJECT: Approval of the Storm Drainage Facility Maintenance Easement Agreement for the Speedway Rebuild site, located on parcel no. 22-04-100-028 at the southwest corner of Beck Road and Pontiac Trail.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *RSH BFC*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Speedway SuperAmerica, LLC has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Speedway redevelopment, located at the southwest corner of Beck Road and Pontiac Trail, in Section 4. The agreement has been favorably reviewed by the City Attorney (Beth Kudla's February 2, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of the Storm Drainage Facility Maintenance Easement Agreement for the Speedway Rebuild site, located on parcel no. 22-04-100-028 at the southwest corner of Beck Road and Pontiac Trail.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

Location Map Speedway Rebuild



CITY OF NOVI

ENGINEERING DIVISION
45175 W TEN MILE RD
NOVI, MI 48375-3024
(248) 347-0454
MAP AUTHOR: Brian Coburn, PE



0 50 100 200 300

FEET

1 INCH = 154 FEET

MAP PRINT DATE: 4/20/09

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

July 17, 2007

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

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Rob Hayes, City Engineer
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Speedway SuperAmerica (Beck Road and Pontiac Trail)
Dedication and Acceptance of Utilities
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660039 NOV1
SP04-67**

Dear Mr. Hayes:

We have received and reviewed the following documents relating to the Speedway SuperAmerica Property:

1. Sanitary Sewer System Easement
2. Water System Easement
3. Bill of Sale (Sanitary Sewer and Water Main Improvements)
4. Title Insurance
5. Maintenance and Guarantee Bond
6. Storm Drainage Facility Maintenance Easement Agreement

Conveyance Documents

Speedway SuperAmerica, LLC seeks to convey the water main and sanitary sewer facilities and corresponding easements to operate, maintain, repair and replace the facilities over, upon and through the subject property, in Section 4 of the City, to the City of Novi. Our office has reviewed and approved the format and language of the Water and Sanitary Sewer System Easements and the corresponding Bill of Sale. They are in the City's standard format and, subject to Engineering approval of the exhibits, are ready for acceptance.

We also approve the Storm Drainage Facility Maintenance Easement Agreement in the enclosed format. It is our understanding Engineering has reviewed and approved the attached Exhibits.

Copies of the above documents are attached. When we receive the original documents from Planning, we will forward them to the City Clerk's

Office with a copy of this report. Once the facilities and corresponding easements are approved and accepted by *Affidavit of the City Engineer*, the original Water and Sanitary Sewer System Easements should be recorded with the Oakland County Register of Deeds. The Bill of Sale, title insurance and Maintenance and Guarantee Bond should be maintained in the City's file.

Because the Storm Drainage Facility Maintenance Easement Agreement requires approval by City Council, it may be placed on an upcoming City Council Agenda for approval. Once approved by City Council and signed by the Mayor, the City Clerk's Office should record it with Oakland County.

Should you have any questions or concerns in regard to this matter, please feel free to contact me.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosures

- C: Maryanne Cornelius, Clerk (w/ Enclosures)
Marina Neumaier, Assistant Director of Finance (w/ Enclosures)
Brian Coburn, Civil Engineer (w/ Enclosures)
Dave Bluhm, Spalding DeDecker (w/ Enclosures)
Sarah Marchioni, Building Department (w/ Enclosures)
Eric J. Nachtrab, L & R Construction Services (w/ Enclosures)
Thomas R. Schultz, Esquire (w/ Enclosures)

STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 13th day of July, 2007, by and between Speedway SuperAmerica LLC, whose address is 500 Speedway Drive; Enon, OH 45323 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (hereinafter the "City").

RECITATIONS:

A. Owner is the owner and developer of a certain parcel of land situated in Section 4 of the City of Novi, Oakland County, Michigan, described on the attached and incorporated **Exhibit A** (the "Property"). Owner has received final site plan approval for construction of a convenience store and fueling station development on the Property.

B. The convenience store and fueling station Development, shall contain certain storm drainage, detention and/or retention facilities, including but not limited to, a detention/sedimentation basin, for the collection, conveyance, storage, treatment and/or discharge of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage, detention and retention facilities, including all wetlands which are part of the system, to insure that the same continue to function as intended. The Owner shall establish a regular and systematic program of maintenance (the "Schedule of Maintenance") for such facilities and areas to insure that the physical condition and intended function of such areas and facilities shall be preserved and maintained. The Schedule of Maintenance and the annual estimated costs for maintenance and repairs for the first three (3) years are described in the attached **Exhibit B**.

In the event that the Owner shall at any time fail to carry out the responsibilities specified within this agreement, and/or in the event of a failure to preserve and/or maintain the storm water drainage, detention and retention facilities in reasonable order and condition, the City may serve written notice upon the Owner setting forth the deficiencies in maintenance and/or preservation along with a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place for a hearing before the City for the purpose of allowing Owner an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following such hearing, the person conducting the hearing shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, as determined by the City in its reasonable discretion, the City shall thereupon have the power and authority, but not the obligation, to enter upon the Property, or cause its agents or contractors to enter the Property through the Ingress/Egress Easement Area as described and depicted in **Exhibit C** and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary with respect to the detention/sedimentation basin within the Detention/Sedimentation Basin Easement Area described and depicted in **Exhibit D**, for the purposes described above. The cost and expense of making and financing such actions by the City, including notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in an amount equivalent to twenty-five (25%) percent of the total of all such costs and expenses incurred, shall be paid by Owner within thirty (30) days of a billing to the Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the Owner, and, in such event, the Owner shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

The parties hereto make this Agreement on behalf of themselves, their heirs, successors, assigns and transferees, and hereby warrant that they have the authority and capacity to execute this Agreement and bind the property as described in the terms and conditions of this agreement.


Invalidation of any of these covenants or conditions by Judgment or Court Order shall in no way affect the validity of any other provision which shall remain in full force and effect.

This agreement shall run with the land and be binding upon all owners, their agents, heirs, successors, assigns and transferees.

IN WITNESS WHEREOF, Owner has executed this Agreement as of the day and year first above set forth.

OWNER

Speedway SuperAmerica LLC


By: D.R. Heppner
Its: V.P. - Operations

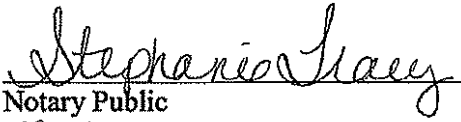
PSA 7/13/07


STATE OF OHIO)
) SS
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 13th day of July, 2007, by D.R. Heppner, as the V.P. - Operations of Speedway SuperAmerica LLC.



STEPHANIE TRACY, Notary Public
In and for the State of Ohio
My Commission Expires July 31, 2008


Notary Public
Montgomery County, Ohio
My Commission Expires: 7/31/08

CITY OF NOVI
A Municipal Corporation

By:
Its:

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this ____ day of _____ 200__, by _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Oakland County, Michigan
My Commission Expires: _____

Drafted by:

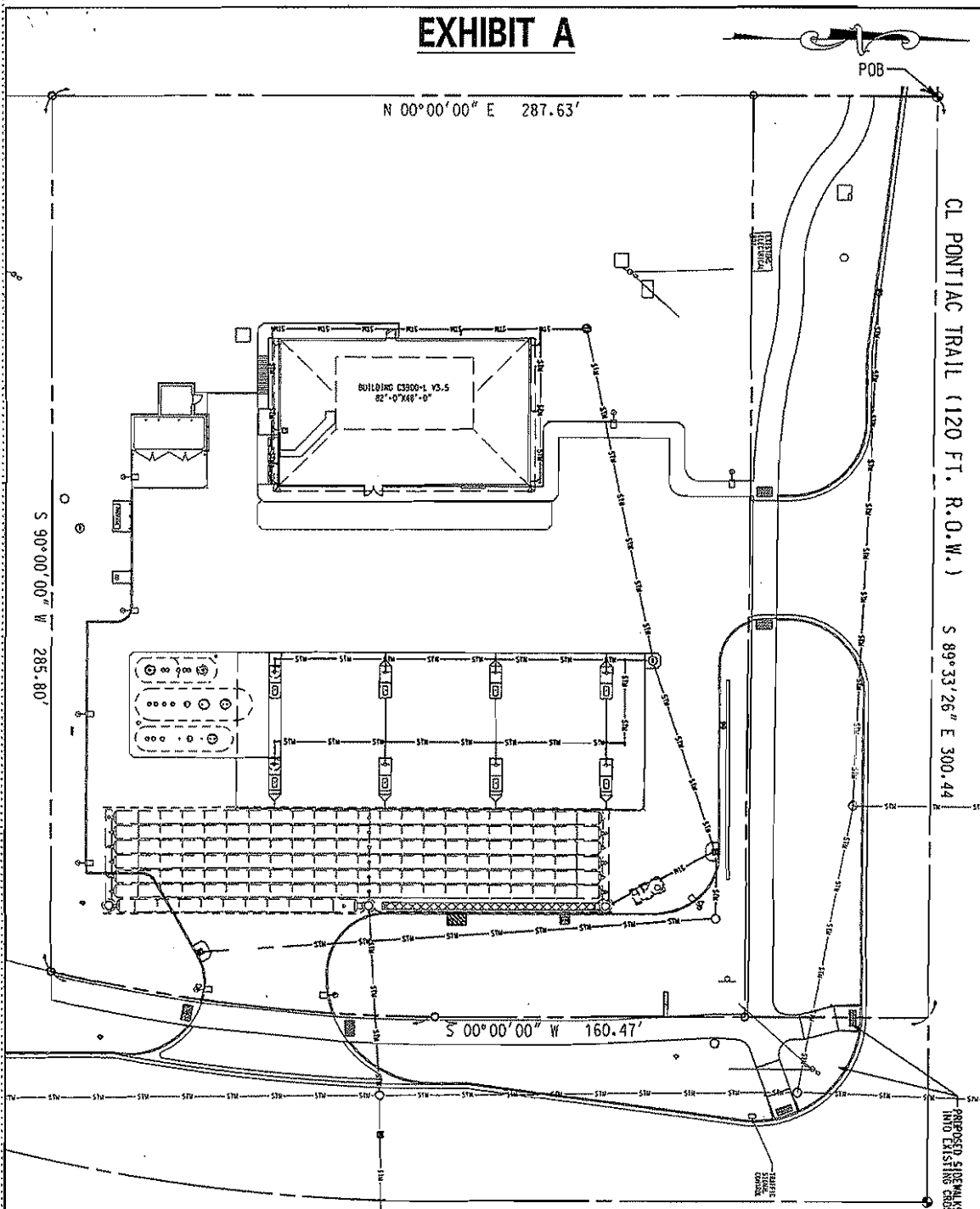
Elizabeth M. Kudla
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040

And when recorded return to:

Maryanne Cornelius, City Clerk
City of Novi
45175 W. Ten Mile Rd
Novi, MI 48375

602691v1

EXHIBIT A



1.96 ACRE PARCEL

A 1.96 acre parcel of land in the NW 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan described as COMMENCING at the NW Corner of said Section 4, said Corner being the

POINT OF BEGINNING;

thence S 89 deg. 33 min. 26 sec. E 300.45 feet along the North Line of said Section 4 and the Centerline of Pontiac Trail;
 thence S 00 deg. 00 min. 00 sec. W 160.46 feet along the West Line of relocated Beck Road;
 thence 125.98 feet along said Beck Road along a 540.00 foot radius curve to the right, having a central angle of 013 deg. 21 min. 59 sec. and subtended by a chord measuring S 06 deg. 41 min. 00 sec. W 125.69 feet;
 thence S 90 deg. 00 min. 00 sec. W 285.80 feet;
 thence N 00 deg. 00 min. 00 sec. E 287.63 along the West Line of said Section 4 to the

POINT OF BEGINNING,

being subject to the rights of the public over the Northernly Sixty (60) feet thereof for Pontiac Trail, and subject to Michigan Bell Telephone Company Easements as recorded in Liber 6222 of Deeds, Page 322 and Liber 7946 of Deeds, together with a Septic System Tile Disposal Field Easement Page 801, Oakland County Records, and as recorded in Liber 11673 of Deeds, Page 463, Oakland County Records, and subject to easements and restrictions of record, if any.



SCALE

EXHIBIT A

LEGAL DESCRIPTION

NOVI, MICHIGAN

47295 PONTIAC TRAIL
 OAKLAND COUNTY

UNIT #0002367



Established 1998



A Subsidiary of Marathon Ashland Petroleum LLC

Prepared by:
 Speedway SuperAmerica LLC
 Akron, OH 44333

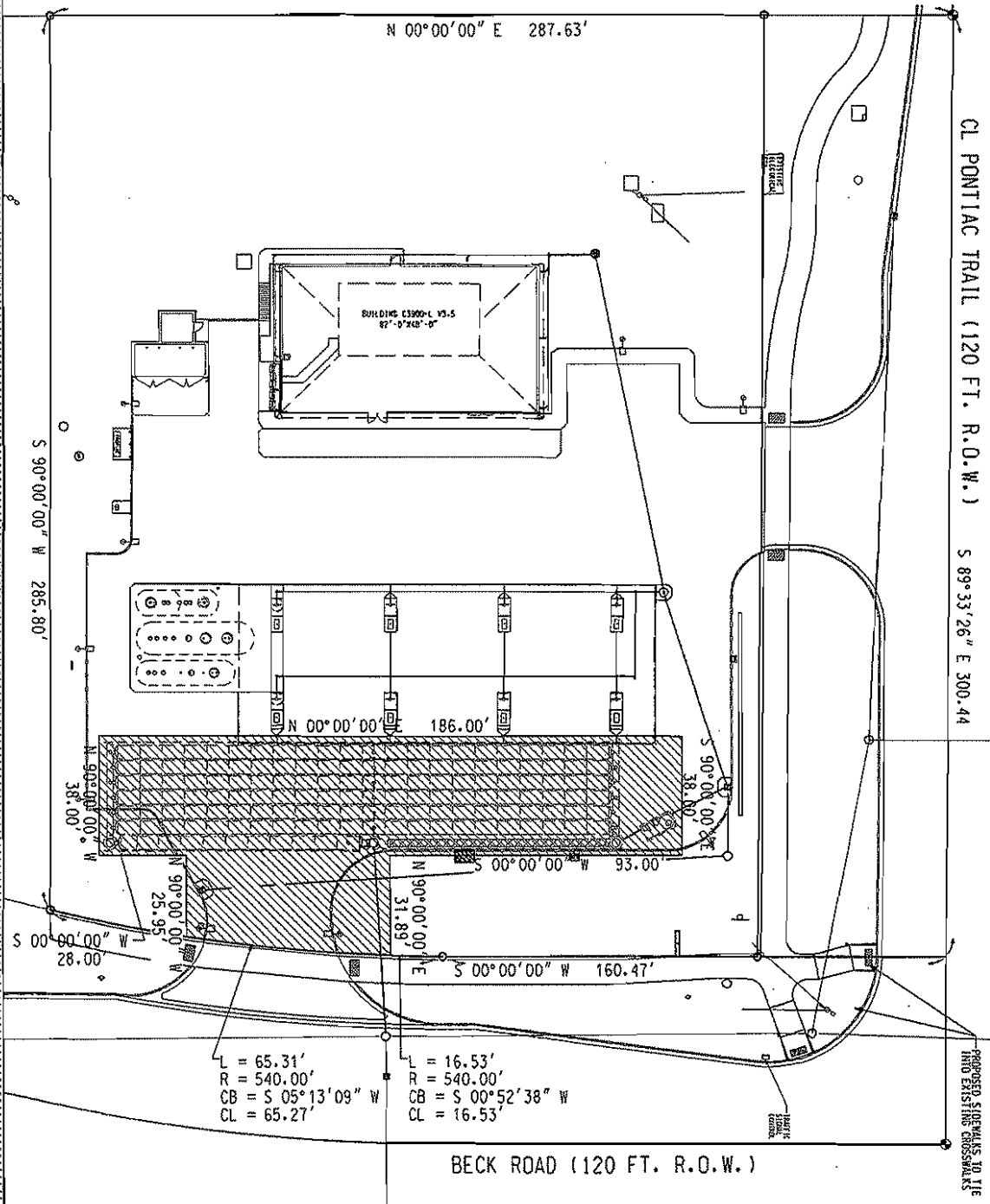
Approved by:
 Marathon Ashland Petroleum LLC
 Marketing & Transportation Engineering Dept.
 Findlay, OH 44020

Exhibit B

Storm Water Unit Component	Frequency of Inspection	Maintenance Activity	Annual Budget
Eccentric Header Row	Annually	Vacuum pump sediment from the header during dry weather if necessary	\$300
Pre-Treatment Unit	Quarterly	The unit will be cleaned in accordance with manufacturer's recommendations.	\$600
Isolator Row	Bi-Annually	JetVac if sediment has been collected to an average depth of 3 inches or more	\$600
Inspection Ports	Bi-Annually	Maintained as necessary.	\$100

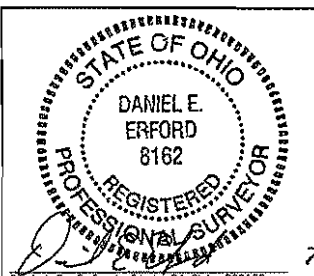
The Owner shall maintain a log of all inspection and maintenance activities and make the log available to City personnel as needed.

EXHIBIT C INGRESS/EGRESS EASEMENT



$L = 65.31'$
 $R = 540.00'$
 $CB = S 05^\circ 13' 09'' W$
 $CL = 65.27'$

$L = 16.53'$
 $R = 540.00'$
 $CB = S 00^\circ 52' 38'' W$
 $CL = 16.53'$



Daniel E. Erford, State of Ohio PS8162 Date 7-16-07

 EASEMENT AREA

0 40
SCALE

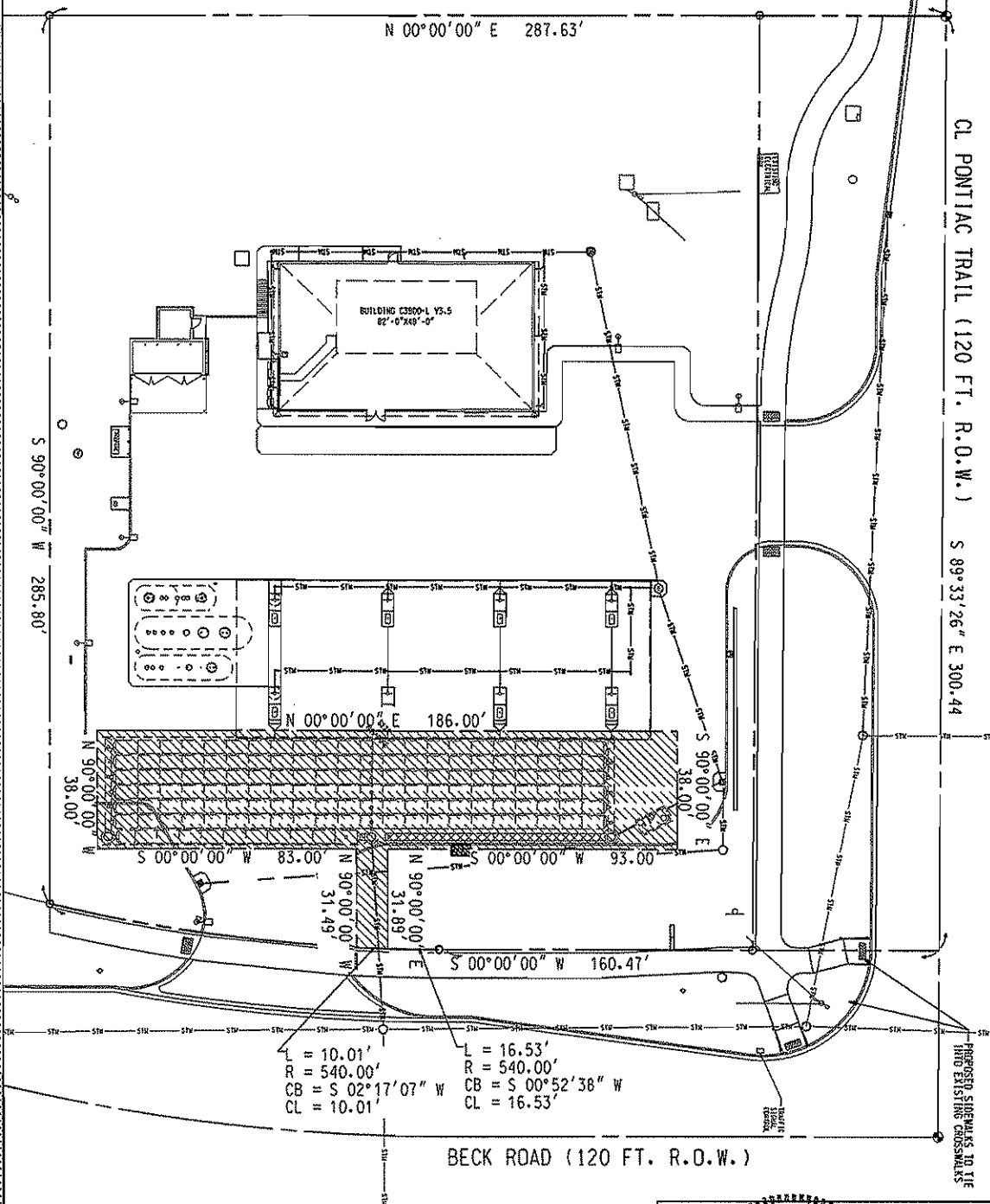
EXHIBIT C INGRESS/EGRESS EASEMENT

NOVI, MICHIGAN
47295 PONTIAC TRAIL
OAKLAND COUNTY
UNIT #0002367

Speedway Established 1999
SA SUPERAMERICA
A Subsidiary of Marathon Ashland Petroleum LLC
Sponsored by Speedway SuperAmerica LLC
Marathon & Transportation Engineers Dept., Findley, OH 43140

EXHIBIT D

DETENTIONSEDIMENTATION BASIN EASEMENT AREA



STATE OF OHIO
 DANIEL E. ERFORD
 8162
 REGISTERED PROFESSIONAL SURVEYOR
 Daniel E. Erford, State of Ohio PS8162
 7-16-07
 Date

EASEMENT AREA



EXHIBIT D
 DETENTIONSEDIMENTATION
 BASIN EASEMENT AREA

NOVI, MICHIGAN
 47295 PONTIAC TRAIL
 OAKLAND COUNTY
 UNIT #0002367

Speedway Established 1998
SA SUPERAMERICA
 A Subsidiary of Marathon Ashland Petroleum LLC
Head Office: Speedway SuperAmerica LLC, 6000 N. Dixie Hwy., Findlay, OH 45822
 Branch: Marathon Ashland Petroleum LLC, 10000 N. Dixie Hwy., Findlay, OH 45824