



CITY of NOVI CITY COUNCIL

**Agenda Item D
September 15, 2014**

SUBJECT: Acceptance of an Open Space Preservation Easement from Toll Brothers, Inc. for open space preservation areas on The Preserve at Island Lake (Phase 8) development, located at the northeast corner of Ten Mile Road and Napier Road in Section 19 of the City.

SUBMITTING DEPARTMENT: Department of Community Development, Planning Division *Baird*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Toll Brothers, Inc. is developing The Preserve at Island Lake, a 45-unit residential development and Phase 8 of the larger Island Lake development on 48.95 acres of land located at the northeast corner of Ten Mile Road and Napier Road. The applicant received approval from the City Council for the inclusion of the property in the existing Island Lake of Novi Residential Unit Development (RUD) on January 21, 2014. The Preliminary Site Plan, Wetland Permit, Woodland Permit and Stormwater Management Plan were approved by the Planning Commission on December 11, 2013.

As part of the RUD development option an applicant must provide areas of open space that will be permanently preserved. Exhibit B graphically depicts the areas being preserved, primarily on the west portion of property, but also including smaller areas in the center of the site and along all property edges. The preserved area covers approximately 20.4 acres, or 45.3% of the 48.95 acre site.

The easement has been reviewed by the City's professional staff and consultants. The easement is currently in a form acceptable to the City Attorney's office for acceptance by the City Council.

RECOMMENDED ACTION: Acceptance of an Open Space Preservation Easement from Toll Brothers, Inc. for open space preservation areas on The Preserve at Island Lake (Phase 8) development, located at the northeast corner of Ten Mile Road and Napier Road in Section 19 of the City.

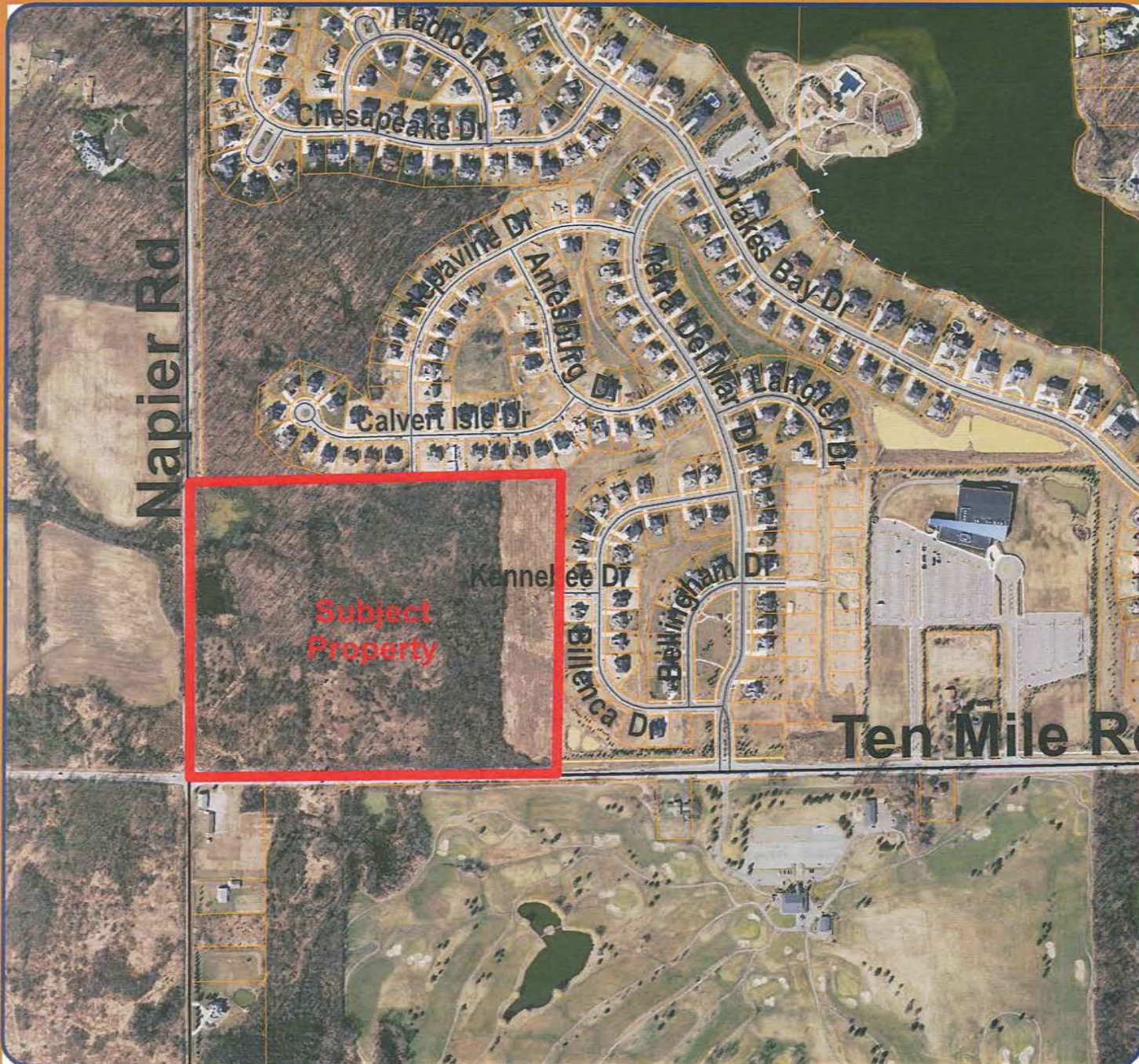
	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

LOCATION MAP

JSP13-69 Preserve at Island Lake (Phase 8)

Location



Map Legend

 Subject Property



City of Novi
Planning Division
Community Development Dept.
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Sara Roediger
Date: 12-02-13

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.

SITE PLAN



Seal: _____

Title:
Site Plan

Project:
**Island Lake Phase 8
 Novi, Michigan**

Prepared for:
 Toll Brothers
 39855 William K. Smith Dr. - Suite B
 New Hudson, Michigan 48165

Revision:	Issued:
Pre-Application	September 23, 2013
Revised	October 11, 2013
Revised	November 22, 2013

Job Number:
 13-022

Drawn By: **jae** Checked By: **jae**



Sheet No. _____



Napier
 Suggested Walk Alignment
 Preferred Walk Alignment
 to Minimize Wetland
 Impact

Ten Mile

CITY ATTORNEY LETTER



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive, Suite 250 ~ Farmington Hills, Michigan 48331

Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

August 11, 2014

Barb McBeth
Deputy Community Development Director
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

**RE: The Preserve of Island Lake
Open Space Preservation Easement**

Dear Ms. McBeth:

We have received and reviewed a revised draft Open Space Preservation Easement for The Preserve of Island Lake, a copy of which is enclosed. As indicated, the easement language is acceptable and consistent with the project proposal. The Exhibits have been revised and appear to address the concerns set forth in our July 28, 2014 review report, including:

1. A metes and bounds description of the open space preservation easement area must be provided or the Register of Deeds will reject it.
2. The depiction of the preservation area is confusing because the hash marks showing the area are the same as that showing the roads. A different pattern should be used for the preservation areas than the rest of the general common elements.

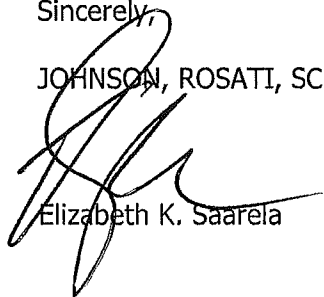
If the exhibits provided are satisfactory subject to planning and engineering review, we can recommend approval of the Open Space Preservation Easement and placement on an upcoming City Council Agenda. An original executed version will be submitted prior to City Council consideration.

Barb McBeth, Deputy Community Development Director
August 11, 2014
Page 2

Should you have any questions or concerns relating to the issues set forth above, please feel free to contact me I that regard.

Sincerely,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

A handwritten signature in black ink, appearing to read 'Elizabeth K. Saarela', written over the typed name below.

Elizabeth K. Saarela

EKS

C: Maryanne Cornelius, Clerk
Charles Boulard, Community Development Director
Sara Roediger, Planner
Adam Wayne, Construction Engineer
Sheila Weber and Kristin Pace, Treasurer's Office
Sarah Marchioni, Building Permit Coordinator
Sue Troutman, City Clerk's Office
Mike Noles, Toll Brothers, Inc.
Tom Gizoni, Alpine Engineering
A'Jene Maxwell, Esquire
Thomas R. Schultz, Esquire

CONSERVATION EASEMENT

OPEN SPACE PRESERVATION EASEMENT

THIS OPEN SPACE PRESERVATION EASEMENT made this 6th day of August, 2014, by and between Toll MI II Limited Partnership, a Michigan limited partnership (hereinafter the "Grantor"), whose address is 29665 William K. Smith Drive, Suite B, New Hudson, Michigan 48165 and the City of Novi, and its successors or assigns, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 (hereinafter the "Grantee").

RECITATIONS:

A. Grantor owns a certain parcel of land situated in the City of Novi, Oakland County, Michigan, as described in Exhibit A, attached hereto and made a part hereof (the "Property"). Grantor has received final site plan approval for construction of a single family residential site condominium on the Property, in accordance with the 7th RUD (defined below). The Property is a part of a condominium community what is governed, in part, by the Harvest Lake of Novi Residential Unit Development Agreement (the "RUD Agreement") entered into by the prior owner of the condominium community and recorded at Liber 18279, Pages 716 through 855, both inclusive, Oakland County Records. To include more land therein, the RUD Agreement was amended by a Harvest Lake of Novi First Amendment of Residential Unit Development Agreement dated as of July 22, 1999, and recorded at Liber 20818, Pages 15 through 40, both inclusive, Oakland County Records, as further amended by that certain Second Amendment to Residential Unit Development Agreement dated July 2, 2003, recorded at Liber 29801, Pages 7 through 23, both inclusive, Oakland County Records, as further amended by that certain Third Amendment to Residential Unit Development Agreement dated July 21, 2003, recorded at Liber 30402, Pages 1 through 15, both inclusive, Oakland County Records, as further amended by that certain Fourth Amendment to Residential Unit Development Agreement dated March 14, 2005, recorded at Liber 35126, Pages 758-772, both inclusive, Oakland County Records, as further amended by that certain Fifth Amendment to Residential Unit Development Agreement dated March 14, 2005, recorded at Liber 35126, Pages 773 through 794, both inclusive, Oakland County Records, as further amended by that certain Sixth Amendment to RUD Agreement dated May 23, 2013, recorded at Liber 45833, Page 95, Oakland County Records and as further amended by that certain Seventh Amendment to RUD Agreement dated February 3, 2014 (the "7th RUD"), recorded at Liber 46895, Page 633, Oakland County Records, which requires that certain portions of the Property be permanently preserved as open space areas. Grantor desires to grant such an easement in order to preserve the required open space areas.

B. The open space areas (the "Easement Areas") situated on the Property are more particularly described on Exhibits B, attached hereto and made a part hereof, the second page of which contains a drawing depicting the Easement Areas.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid, the receipt and adequacy of which are hereby acknowledged, Grantor hereby reserves, conveys and grants the following Open Space Preservation Easement, which shall be binding upon the Grantor, and the City, and their respective heirs, successors, assigns and/or transferees and shall be for the benefit of the City, all Grantors and purchasers of the Property and their respective heirs, successors, assigns and/or transferees.

1. The purpose of this Open Space Preservation Easement is to preserve the Easement Areas in accordance with the approved 7th RUD and corresponding site plans ("Site Plans") for the development. As set forth in the approved Site Plans with respect to all or any portion of the Property, the Easement Areas shall be perpetually preserved as open space areas, including, but not limited to, as parks, playgrounds, fields, walking trails, nature areas and other approved uses as permitted.

2. Grantor initially, and thereafter any association of co-owners responsible for the portion of the Property in which the one or more of the Easement Areas are located (each an "Association"), shall maintain and repair the Open Space and park areas in the condition required by the approved site plan, including but not limited to maintenance of landscaped areas and amenities, if any, therein.

3. This Open Space Preservation Easement does not grant or convey to Grantee, or any member of the general public, any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Grantor, Grantee and its authorized employees and agents (collectively, "Grantee's Representatives") may enter upon and inspect the Easement Area to determine whether the Easement Area is being maintained in compliance with the terms of the Open Space Preservation Easement.

4. In the event that the Grantor or any Association, as applicable, shall at any time fail to carry out the responsibilities specified within this Open Space Preservation Easement and/or fail to preserve and/or maintain the open space areas in reasonable order and condition, the City may serve written notice upon the responsible Grantor/Association setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other Council, body or official delegated by the City Council, for the purpose of allowing the responsible Grantor/Association to be heard as to why the City should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official, designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall thereupon have the power and authority, but not obligation to enter upon the Property, or cause its agents or

GRANTEE

CITY OF NOVI
A Municipal Corporation

By: _____

Its:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, on behalf of the City of Novi, a Municipal Corporation.

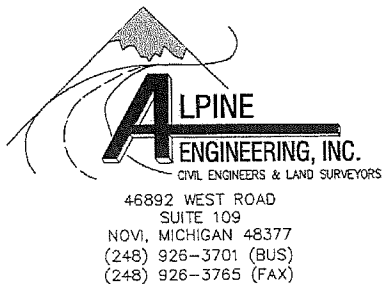
Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted By:
Elizabeth K. Saarela, Esquire
Johnson, Rosati, Schultz & Joppich, P.C.
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331-5627

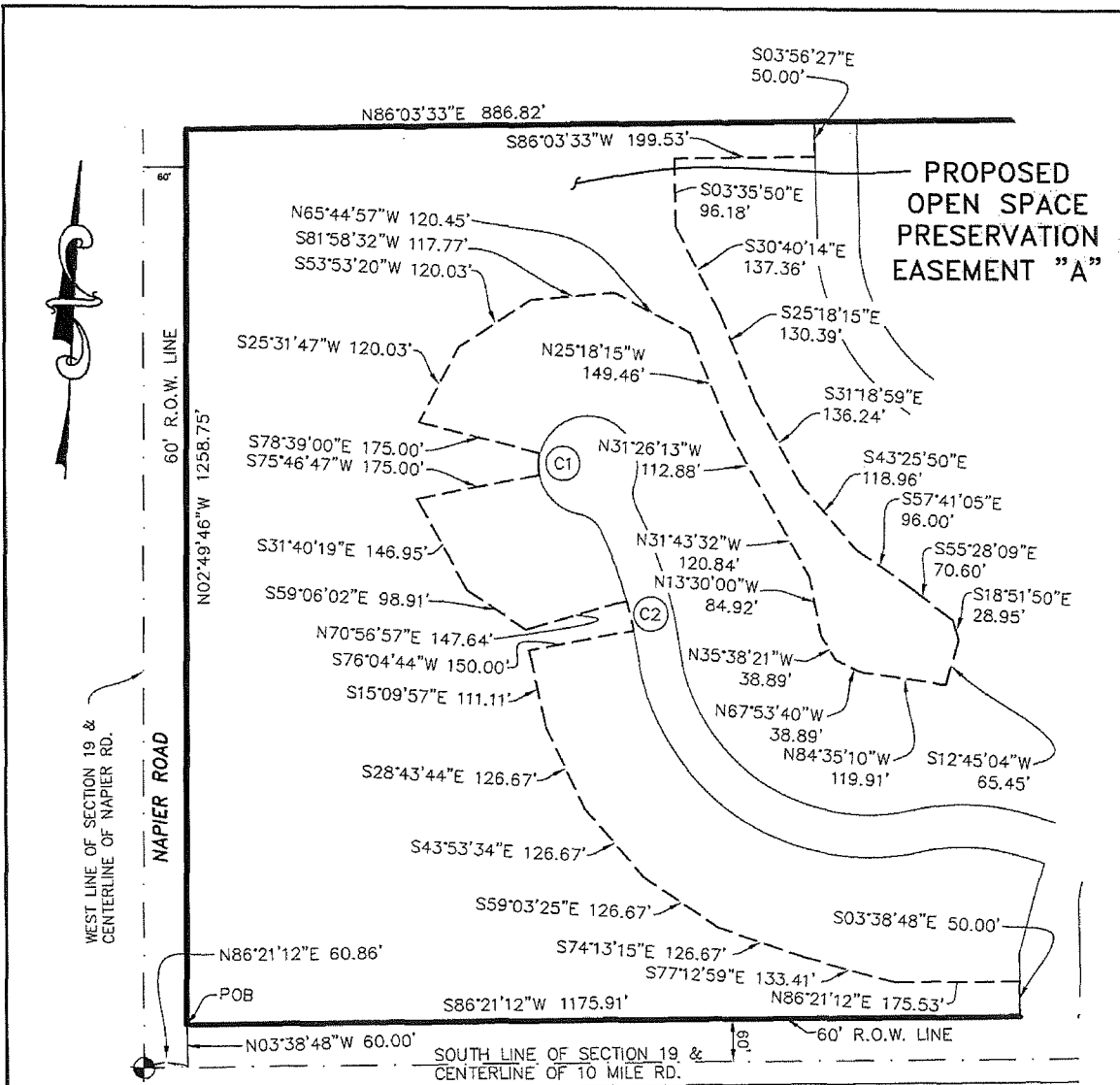
After Recording, Return to:
Maryanne Cornelius, Clerk
City of Novi
45175 10 Mile Road
Novi, Michigan 48375

LEGAL DESCRIPTION OF THE PRESERVE AT ISLAND LAKE

A PART OF THE SOUTHWEST 1/4 OF SECTION 19, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, FOR A POINT OF BEGINNING; THENCE NORTH 02°49'46" WEST, 1318.44 FEET, (SAID POINT BEING SOUTH 02°49'46" EAST, 1315.42 FEET FROM THE WEST 1/4 CORNER OF SAID SECTION 19), ALONG THE WEST LINE OF SAID SECTION 19 AND THE CENTERLINE OF NAPIER ROAD, TO THE SOUTHWEST CORNER OF "ISLAND LAKE ORCHARDS", OAKLAND COUNTY CONDOMINIUM PLAN NO. 1552, MASTER DEED RECORDED IN LIBER 30468, PAGES 611 THROUGH 689, OAKLAND COUNTY RECORDS, AS AMENDED; THENCE NORTH 86°03'33" EAST, 1618.18 FEET, ALONG A SOUTHERLY LINE OF SAID "ISLAND LAKE ORCHARDS"; THENCE SOUTH 02°20'47" EAST, 1326.96 FEET, ALONG A WESTERLY LINE OF SAID "ISLAND LAKE ORCHARDS", TO THE SOUTH LINE OF SAID SECTION 19 AND THE CENTERLINE OF TEN MILE ROAD, (SAID POINT BEING SOUTH 86°21'12" WEST, 1023.50 FEET FROM THE SOUTH 1/4 CORNER OF SAID SECTION 19); THENCE SOUTH 86°21'12" WEST, 1606.86 FEET, ALONG THE SOUTH LINE OF SAID SECTION 19 AND THE CENTERLINE OF SAID TEN MILE ROAD, TO THE POINT OF BEGINNING. ALL OF THE ABOVE CONTAINING 48.953 ACRES. ALL OF THE ABOVE BEING SUBJECT TO THE RIGHTS OF THE PUBLIC IN NAPIER ROAD AND TEN MILE ROAD. ALL OF THE ABOVE BEING SUBJECT TO EASEMENTS RESTRICTIONS AND RIGHT-OF-WAYS OF RECORD.



CLIENT:	DATE: 7-17-14
TOLL MI II LIMITED PARTNERSHIP	DRAWN BY: CAK
EXHIBIT A	CHECKED BY: GLM
THE PRESERVE AT ISLAND LAKE	0 X X
SECTION: 19 TOWNSHIP: 1 N. RANGE: 8 E.	FBK: -
CITY OF NOVI	CHF: -
OAKLAND COUNTY	SCALE HOR 1"=X FT. VER 1"=- FT.
MICHIGAN	13-260



SOUTHWEST CORNER
SECTION 19
T.1N., R.8E.

CURVE TABLE			
CURVE	LENGTH	RADIUS	CHORD
C1	31.24'	70.00'	S01°26'06"E 30.98'
C2	42.82'	590.00'	S16°00'02"E 42.81'

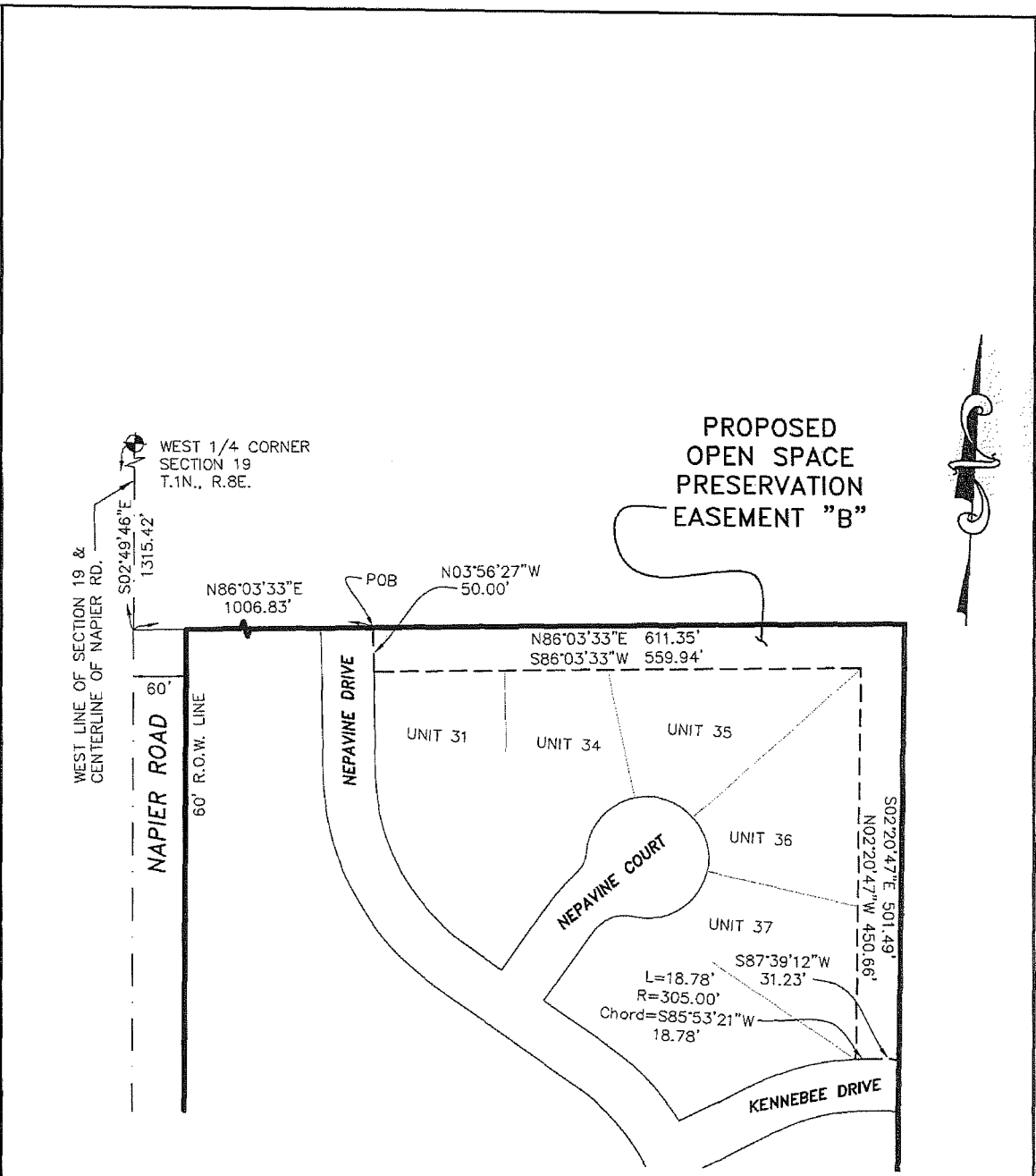
OPEN SPACE PRESERVATION EASEMENT "A":

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE N86°21'12"E 60.86 FEET ALONG THE SOUTH LINE OF SAID SECTION 19 AND THE CENTERLINE OF TEN MILE ROAD; THENCE N03°38'48"W 60.00 FEET TO A POINT OF BEGINNING; THENCE N02°49'46"W 1258.75 FEET; THENCE N86°03'33"E 886.82 FEET; THENCE S03°56'27"E 50.00 FEET; THENCE S86°03'33"W 199.53 FEET; THENCE S03°35'50"E 96.18 FEET; THENCE S30°40'14"E 137.36 FEET; THENCE S25°18'15"E 130.39 FEET; THENCE S31°18'59"E 136.24 FEET; THENCE S43°25'50"E 118.96 FEET; THENCE S57°41'05"E 96.00 FEET; THENCE S55°28'09"E 70.60 FEET; THENCE S18°51'50"E 28.95 FEET; THENCE S12°45'04"W 65.45 FEET; THENCE N84°35'10"W 119.91 FEET; THENCE N67°53'40"W 38.89 FEET; THENCE N35°38'21"W 38.89 FEET; THENCE N13°30'00"W 84.92 FEET; THENCE N31°43'32"W 120.84 FEET; THENCE N65°44'57"W 120.45 FEET; THENCE N25°18'15"W 149.46 FEET; THENCE N65°44'57"W 120.45 FEET; THENCE S81°58'32"W 117.77 FEET; THENCE S53°53'20"W 120.03 FEET; THENCE S25°31'47"W 120.03 FEET; THENCE S78°39'00"E 175.00 FEET; THENCE S75°46'47"W 175.00 FEET; THENCE S31°40'19"E 146.95 FEET; THENCE S59°06'02"E 98.91 FEET; THENCE N70°56'57"E 147.64 FEET; THENCE S76°04'44"W 150.00 FEET; THENCE S15°09'57"E 111.11 FEET; THENCE S28°43'44"E 126.67 FEET; THENCE S43°53'34"E 126.67 FEET; THENCE S59°03'25"E 126.67 FEET; THENCE S74°13'15"E 126.67 FEET; THENCE S77°12'59"E 133.41 FEET; THENCE N86°21'12"E 175.53 FEET; THENCE S03°38'48"E 50.00 FEET; THENCE S86°21'12"W 1175.91 FEET TO THE POINT OF BEGINNING.

ALPINE
ENGINEERING, INC.
CIVIL ENGINEERS & LAND SURVEYORS

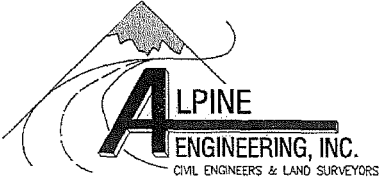
46892 WEST ROAD
SUITE 109
NOVI, MICHIGAN 48377
(248) 926-3701 (BUS)
(248) 926-3765 (FAX)

CLIENT: TOLL MI II LIMITED PARTNERSHIP	DATE: 7-31-14
EXHIBIT B	DRAWN BY: CAK
	CHECKED BY: GLM
THE PRESERVE AT ISLAND LAKE SECTION: 19 TOWNSHIP: 1 N. RANGE: 8 E. CITY OF NOVI OAKLAND COUNTY MICHIGAN	0 100 200
	FBK: - 1/3
	CHF: - 13-260
SCALE HOR 1"=200FT. VER 1"=- FT.	



OPEN SPACE PRESERVATION EASEMENT "B":

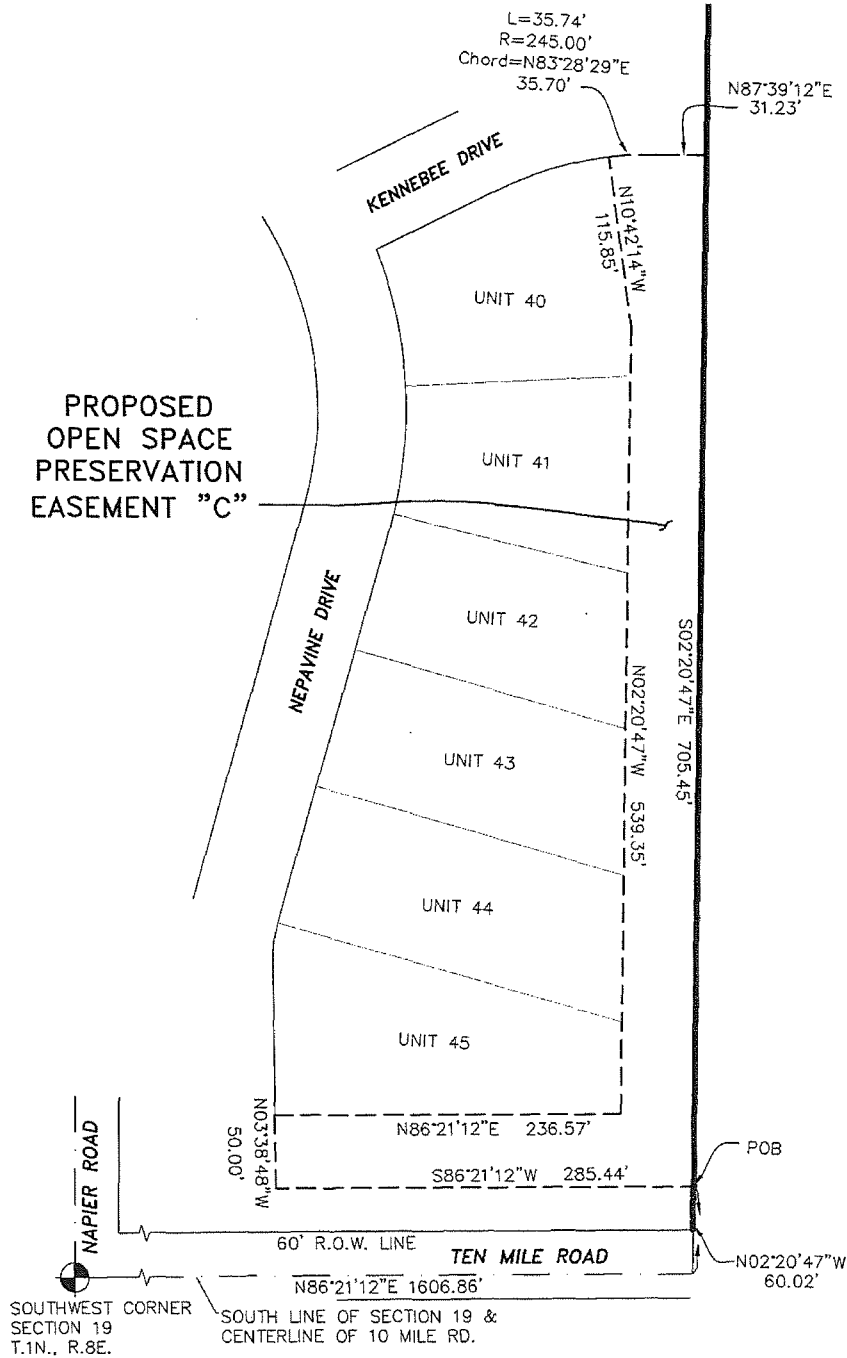
COMMENCING AT THE WEST 1/4 CORNER OF SECTION 19, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE S02°49'46"E 1315.42 FEET ALONG THE WEST LINE OF SAID SECTION 19 AND THE CENTERLINE OF NAPIER ROAD; THENCE N86°03'33"E 1006.83 FEET TO A POINT OF BEGINNING; THENCE N86°03'33"E 611.35 FEET; THENCE S02°20'47"E 501.49 FEET; THENCE S87°39'12"W 31.23 FEET; THENCE 18.78 FEET ALONG A CIRCULAR CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 305.00 FEET AND A CHORD WHICH BEARS S85°53'21"W 18.78 FEET; THENCE N02°20'47"W 450.66 FEET; THENCE S86°03'33"W 559.94 FEET; THENCE N03°56'27"W 50.00 FEET TO THE POINT OF BEGINNING.



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CLIENT:	TOLL MI II LIMITED PARTNERSHIP	DATE:	7-31-14
EXHIBIT B		DRAWN BY:	CAK
		CHECKED BY:	GLM
THE PRESERVE AT ISLAND LAKE SECTION: 19 TOWNSHIP: 1 N. RANGE: 8 E. CITY OF NOVI OAKLAND COUNTY MICHIGAN			
		FBK: -	2/3
		CHF: -	
		SCALE	

**PROPOSED
OPEN SPACE
PRESERVATION
EASEMENT "C"**



OPEN SPACE PRESERVATION EASEMENT "C":

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE $N86^{\circ}21'12''E$ 1606.86 FEET ALONG THE SOUTH LINE OF SAID SECTION 19 AND THE CENTERLINE OF TEN MILE ROAD; THENCE $N02^{\circ}20'47''W$ 60.02 FEET TO A POINT OF BEGINNING; THENCE $S86^{\circ}21'12''W$ 285.44 FEET; THENCE $N03^{\circ}38'48''W$ 50.00 FEET; THENCE $N86^{\circ}21'12''E$ 236.57 FEET; THENCE $N02^{\circ}20'47''W$ 539.35 FEET; THENCE $N10^{\circ}42'14''W$ 115.85 FEET; THENCE 35.74 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 245.00 FEET AND A CHORD WHICH BEARS $N83^{\circ}28'29''E$ 35.70 FEET; THENCE $N87^{\circ}39'12''E$ 31.23 FEET; THENCE $S02^{\circ}20'47''E$ 705.45 FEET TO THE POINT OF BEGINNING.

ALPINE
ENGINEERING, INC.
CIVIL ENGINEERS & LAND SURVEYORS

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CLIENT: TOLL MI II LIMITED PARTNERSHIP	DATE: 7-31-14
EXHIBIT B	DRAWN BY: CAK
	CHECKED BY: GLM
THE PRESERVE AT ISLAND LAKE SECTION: 19 TOWNSHIP: 1 N. RANGE: 8 E. CITY OF NOVI OAKLAND COUNTY MICHIGAN	0 50 100
	FBK: -
	CHF: -
	SCALE HOR 1"=100 FT. VER 1"= - FT.