

CITY of NOVI CITY COUNCIL

**Agenda Item H
July 20, 2009**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Fifth-Third Bank Corporation for the Fifth-Third Bank located at 31125 Beck Road on the west side of Beck Road south of Pontiac Trail in Section 4 (parcel 22-04-100-029).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *[Signature]* *[Signature]*

BACKGROUND INFORMATION:

The Property Management Department for the Fifth-Third Bank Corporation, has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Fifth-Third Bank site, located at 31125 Beck Road (at the southwest corner of Beck Road and Pontiac Trail), Section 4 of the City of Novi. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's April 24, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Fifth-Third Bank Corporation for the Fifth-Third Bank located at 31125 Beck Road on the west side of Beck Road south of Pontiac Trail in Section 4 (parcel 22-04-100-029).

	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				

April 24, 2009

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

Rob Hayes, Public Services Director
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

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

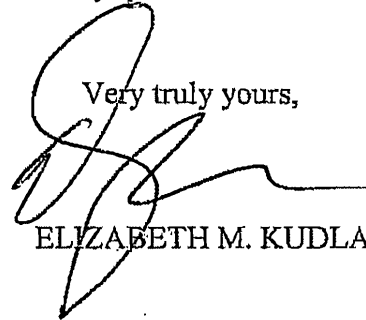
**Re: Fifth Third Bank, SP06-32
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660113.NOV1**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for Fifth Third Bank. The City's Consulting Engineer has approved the Exhibits and the schedule of maintenance. The Agreement appears to be in order and may be placed on an upcoming City Council Agenda for approval. Once approved and executed by the City, the Agreement should be recorded with Oakland County Records by the City Clerk's Office.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosures

- C: Maryanne Cornelius, Clerk (w/Original Enclosures)
Marina Neumaier, Assistant Finance Director (w/Enclosures)
Charles Boulard, Building Official (w/Enclosures)
Barb McBeth, Deputy Community Development Director (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Taylor Reynolds and Byron Hanson, Spalding DeDecker (w/Enclosures)
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Joseph Lash, Esquire (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

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**STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT**

THIS STORM DRAINAGE FACILITY MAINTENANCE EASEMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 2009, by and between Fifth Third Bank, a Michigan banking corporation, whose address is c/o Property Management Department, Fifth Third Center, MD10ATA1, Cincinnati, Ohio 45263 ("Owner"), and the City of Novi, a Michigan municipal corporation, and its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 ("City").

RECITATIONS:

A. Owner is the owner and developer of a certain parcel of land situated in the City of Novi, Oakland County, Michigan, depicted and described on the attached and incorporated **Exhibit A** (the "Property"). Owner has received final site plan approval for the construction of a commercial bank development on the Property (the "Fifth Third Development").

B. The Fifth Third Development shall contain certain underground and above-ground storm detention facilities ("Storm Detention Facilities") for the collection, storage, and/or discharge of storm water from the Property in accordance with all approved plans and all applicable ordinances, laws, and regulations.

NOW, THEREFORE, Owner hereby covenants and agrees that Owner shall, at its own expense, perpetually preserve, maintain, and repair all Storm Detention Facilities, which are part of the storm detention system on the Property, to insure that the same continue to function as intended. 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 facilities and areas 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 on the attached and incorporated **Exhibit B**.

In the event that 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 Detention Facilities in reasonable order and condition, the City may serve written notice upon 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 areas depicted and described on the attached and incorporated **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 basin easement areas depicted and described on the attached and incorporated **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 Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, 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 Owner, and, in such event, 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 and 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. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together which shall be deemed one and the same 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 and their agents, heirs, successors, assigns and transferees.

[Signatures to follow on next page]

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

OWNER:

FIFTH THIRD BANK,
a Michigan banking corporation

By: Jeffrey Wagner
Its: Vice President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of APRIL, 2009, by Jeffrey Wagner, as the Vice President of Fifth Third Bank, a Michigan banking corporation.

BRADLEY M. NEWMAN
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 27, 2013
Acting in the County of OAKLAND

Bradley M. Newman
Notary Public BRADLEY M. NEWMAN
OAKLAND County, Michigan
Acting in OAKLAND County, MI
My Commission Expires: 4-27-2013

[Signatures continuing on next page]

CITY:

CITY OF NOVI,
a Michigan municipal corporation

By:
Its:

STATE OF MICHIGAN)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2009, by _____, on behalf of the City of Novi, a Michigan municipal corporation.

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

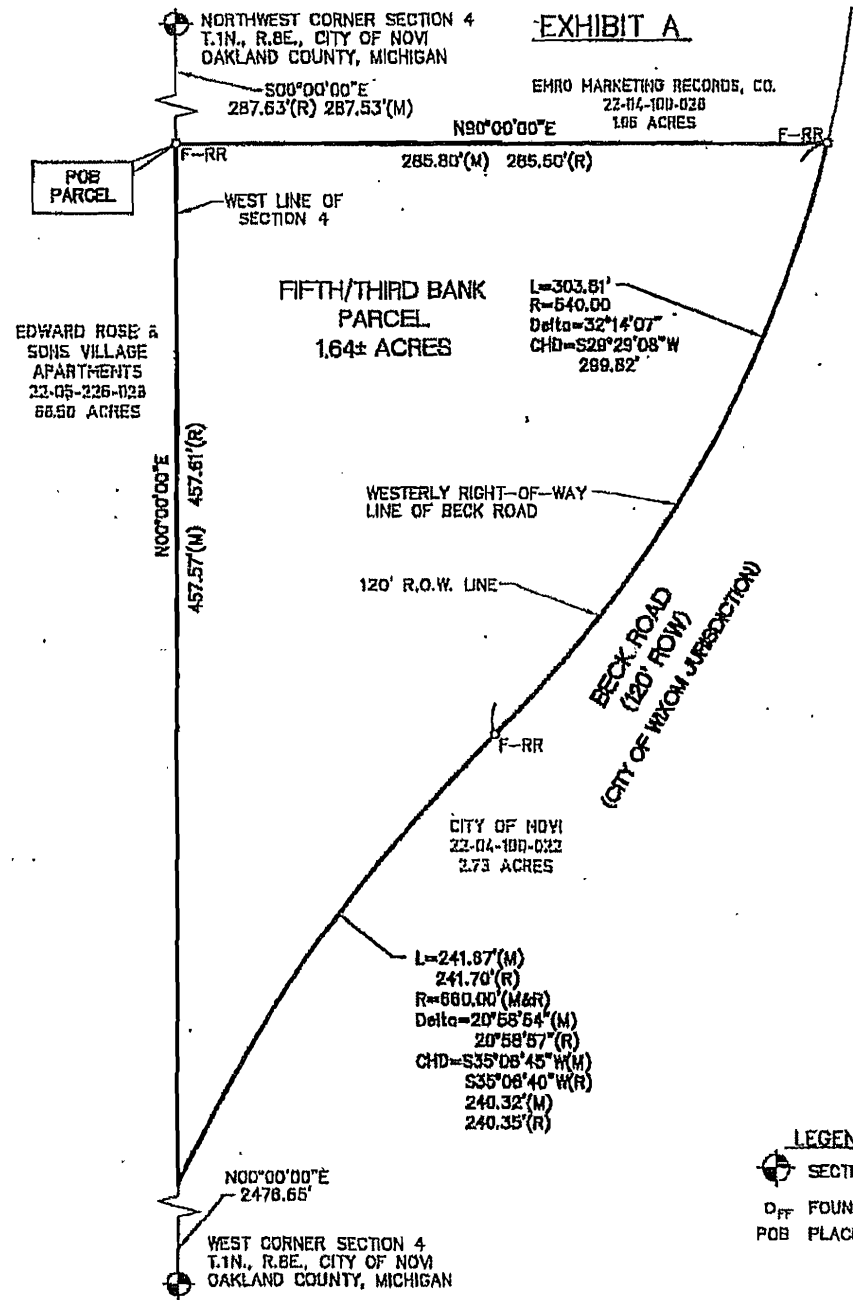
Drafted by:

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

EXHIBIT A



CLIENT K4 ARCHITECTURE EXHIBIT A PROPERTY DRAWING	JOB: 06000624.30	CAD: 06000624EA2
	DR: ME	GR: JIF/DSB
SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	BOOK	PG.
	SHEET 1 OF 2	DATE: 11-08-08
SCALE: 1 INCH = 60 FEET	FILE NO: 5101-84-D1	
ATWELL-HICKS Engineering - Surveying - Planning Environmental - Water/Wastewater		
000 850 4200 www.atwell-hicks.com MICHIGAN ILLINOIS OHIO FLORIDA		

EXHIBIT A

LEGAL DESCRIPTION FIFTH/THIRD BANK PARCEL

A parcel of land located in the Northwest 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan, described as: Commencing at the Northwest corner of said Section 4; thence S00°00'00"W 287.53 feet (recorded as 287.63 feet) along the West Line of said Section 4 for a PLACE OF BEGINNING; thence N90°00'00"E 285.80 feet (recorded as 285.50 feet); thence along the Westerly Right-of-Way Line of Beck Road (120' Wide) the following two (2) courses; 303.81 feet along the arc of a 540.00 foot radius non-tangential circular curve to the right, chord bearing S29°29'08"W 299.82 feet and 241.67 feet (recorded as 241.70 feet) along the arc of a 660.00 foot radius reverse circular curve to the left, chord bearing S35°06'45"W 240.32 feet (recorded as S35°06'40"W 240.35 feet); thence N00°00'00"E 457.57 feet (recorded as 457.61 feet) along the West Line of said Section 4 to the Place of Beginning, containing 1.64 acres of land, more or less, subject to easements and restrictions of record, if any.


CLIENT K4 ARCHITECTURE EXHIBIT A	JOB# 08000824.30	CAD 08000824EA2
	DR. ME	CR. JF/DSB
PROPERTY DESCRIPTION SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	BOOK	PD.
	SHEET 2 OF 2	DATE 11-08-08
	FILE NO 5101-84-02	
	ATWELL-HICKS Engineering • Surveying • Planning Environmental • Water/Wastewater 888 850 4200 www.atwell-hicks.com	
	 MICHIGAN ILLINOIS OHIO FLORIDA	

EXHIBIT 'B'

MAINTENANCE TASKS AND SCHEDULE DURING CONSTRUCTION

Tasks	Storm Sewer System	Catch Basin Sumps	Catch Basin Inlet Castings	Sediment Basin & Swales	Outflow Control Structures	Schedule
Inspect for sediment accumulation	X	X	X	X	X	Weekly
Removal of sediment accumulation	X	X	X	X	X	As needed and prior to turnover
Inspect for floatables and debris		X	X	X	X	Quarterly
Cleaning of floatables and debris		X	X	X	X	Quarterly and at turnover
Inspection for erosion				X		Weekly as needed
Re-establish permanent vegetation on eroded slopes				X		As needed and prior to turnover
Replacement of stone					X	As needed
Wet weather inspection of structural elements (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer.	X			X	X	As needed and at turnover
Make adjustments or replacements as determined by wet weather inspection	X			X	X	As needed
Event Sweeping						As needed

PERMANENT MAINTENANCE TASKS AND SCHEDULE

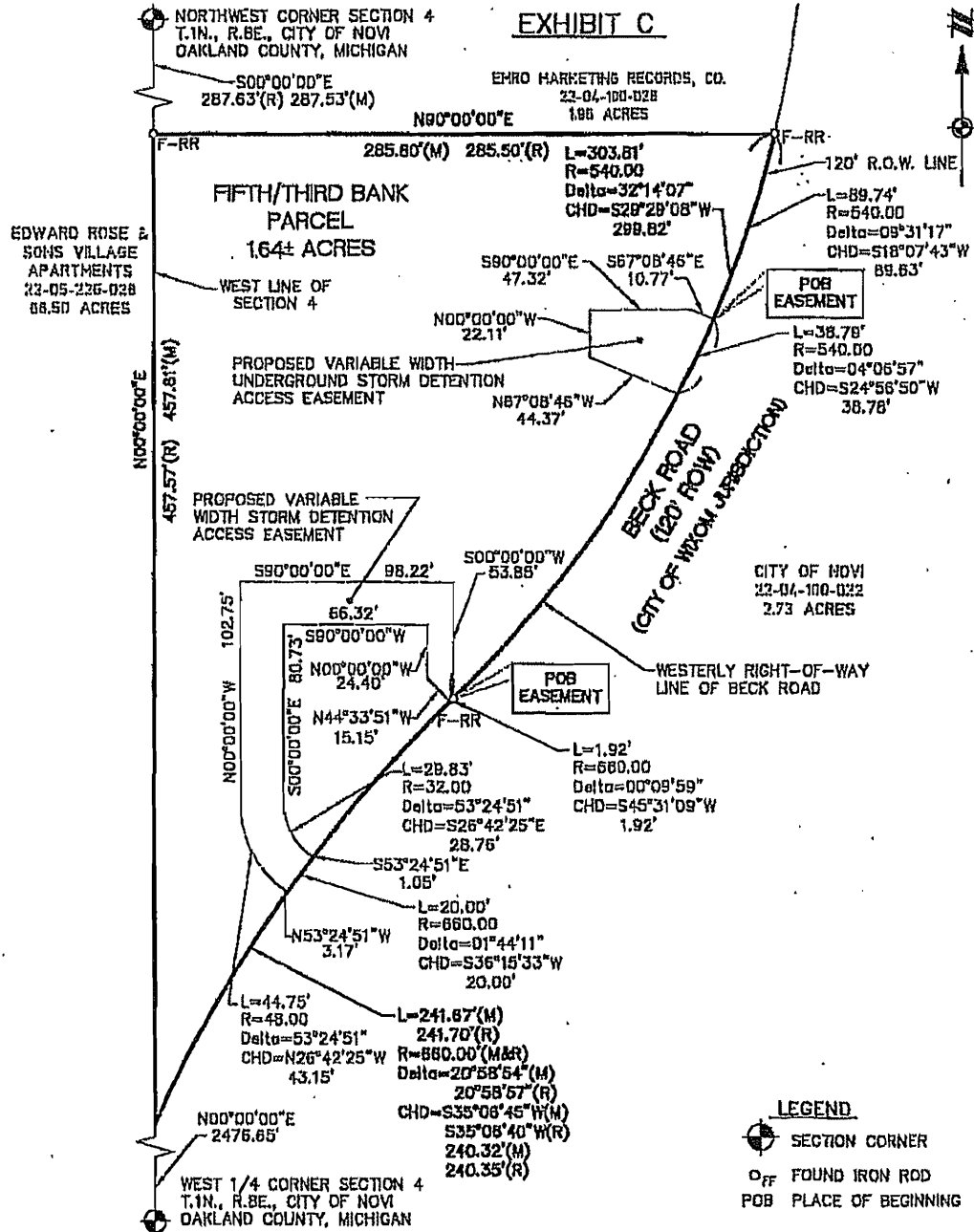
Tasks	Storm Sewer System	Catch Basin Sumps	Catch Basin Inlet Castings	Sediment Basin & Swales	Outflow Control Structures	Schedule
Inspect for sediment accumulation	X	X	X	X	X	Annually
Removal of sediment accumulation	X	X		X	X	Every 2 years as needed
Inspect for floatables and debris		X	X	X	X	Annually
Cleaning of floatables and debris		X	X	X	X	Annually
Inspection for erosion				X		Annually
Re-establish permanent vegetation on eroded slopes				X		As needed
Replacement of stone					X	As needed
Wet weather inspection of structural elements (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer.	X			X	X	Annually
Make adjustments or replacements as determined by wet weather inspection	X			X	X	As needed
Keep records of all inspections and maintenance activities						Annually
Keep records of all costs for inspections, maintenance and repairs						Annually

Maintenance Plan Budget	
Annual inspection for sediment accumulation	\$250
Removal of sediment every 2 years as needed	\$1,150
Inspect for floatables and debris annually and as needed	\$250
Removal of floatables and debris annually and as needed	\$350
Inspect system for erosion annually and as needed	\$250
Re-establish permanent vegetation on eroded slopes as needed	\$750
Total annual budget	\$3,000

EXHIBIT 'B'
MAINTENANCE PLAN

In addition to the following scheduled maintenance activities, Grantor shall maintain a log of all inspection and maintenance activities and make the log available to Grantee as requested.

Maintenance Activity	Annual Budget
Bi-yearly Underground Detention Chamber Clean-out	\$2,000
Bi-yearly Sedimentation Basin & Outlet Inspection and Clean-out	\$1,000



- LEGEND**
- SECTION CORNER
 - FOUND IRON ROD
 - PLACE OF BEGINNING

CLIENT K4 ARCHITECTURE	JOB: 06000624.30	CAD: 08000824EA2
	DR. ME	CHK. JIF/DSB
EXHIBIT C STORM DETENTION ACCESS EASEMENTS	BOOK	PB
	SHEET 1 OF 2	DATE: 11-08-08
SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	FILE NO: 5101-84-05	
SCALE: 1 INCH = 60 FEET	ATWELL-HICKS Engineering • Surveying • Planning Environmental • Water/Wastewater 888 888 4200 www.atwell-hicks.com MICHIGAN ILLINOIS OHIO FLORIDA	

EXHIBIT C

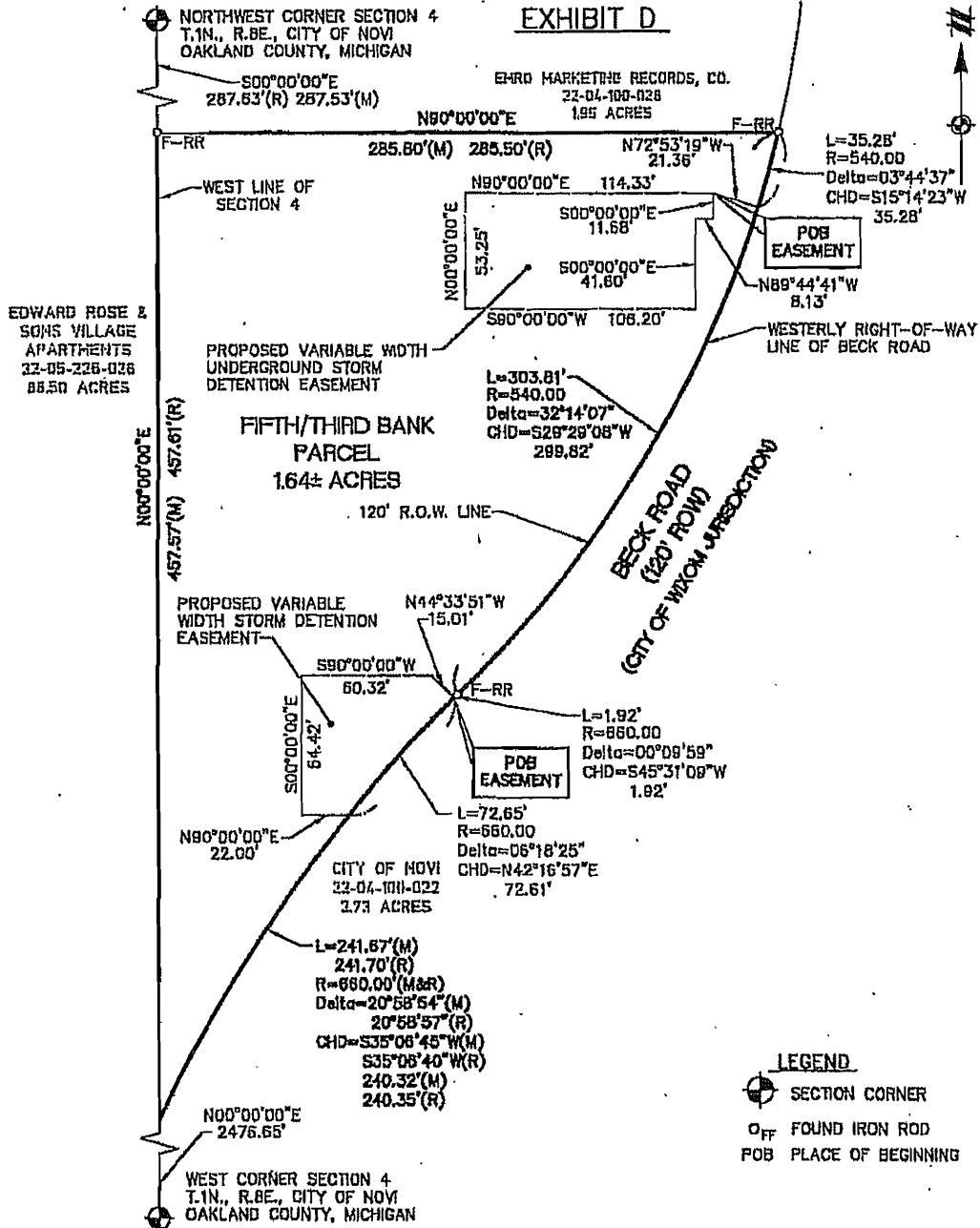
LEGAL DESCRIPTION: (UNDERGROUND STORM DETENTION ACCESS EASEMENT)

A variable width easement located in the Northwest 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan, described as: Commencing at the Northwest corner of said Section 4; thence S00°00'00"W 287.53 feet along the West Line of said Section 4; thence N90°00'00"E 285.80 feet; thence 89.74 feet along the arc of a 540.00 foot radius non-tangential circular curve to the right, chord bearing S18°07'43"W 89.63 feet along the Westerly Right-of-Way Line of Beck Road (120' Wide) for a PLACE OF BEGINNING; thence continuing 38.79 feet along the arc of a 540.00 foot radius circular curve to the right, chord bearing S24°56'50"W 38.78 feet along said Right-of-Way; thence N67°08'46"W 44.37 feet; thence N00°00'00"E 22.11 feet; thence S90°00'00"E 47.32 feet; thence S67°08'46"E 10.77 feet to the Place of Beginning.

LEGAL DESCRIPTION: (STORM DETENTION ACCESS EASEMENT)

A variable width easement located in the Northwest 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan, described as: Commencing at the Northwest corner of said Section 4; thence S00°00'00"W 287.53 feet along the West Line of said Section 4; thence N90°00'00"E 285.80 feet; thence 303.81 feet along the arc of a 540.00 foot radius non-tangential circular curve to the right, chord bearing S29°29'08"W 299.82 feet along the Westerly Right-of-Way Line of Beck Road (120' Wide) for a PLACE OF BEGINNING; thence 1.92 feet along the arc of a 660.00 foot radius reverse circular curve to the left, chord bearing S45°31'09"W 1.92 feet along said Right-of-Way; thence N44°33'51"W 15.15 feet; thence N00°00'00"E 24.40 feet; thence N90°00'00"W 66.22 feet; thence S00°00'00"W 80.73 feet; thence 29.83 feet along the arc of a 32.00 foot radius circular curve to the left, chord bearing S26°42'25"E 28.76 feet; thence S53°24'51"E 1.05 feet; thence 20.00 feet along the arc of a 660.00 foot non-tangential radius circular curve to the left, chord bearing S36°15'33"W 20.00 feet along said Right-of-Way; thence N53°24'51"W 3.17 feet; thence 44.75 feet along the arc of a 48.00 foot radius circular curve to the right, chord bearing N26°42'25"W 43.15; thence N00°00'00"E 102.75 feet; thence S90°00'00"E 98.22 feet; thence S00°00'00"W 53.85 feet to the Place of Beginning.

CLIENT K4 ARCHITECTURE EXHIBIT C STORM DETENTION ACCESS EASEMENTS LEGAL DESCRIPTIONS	JOB: 08000824.30 DTL: ME	CAD: 08000824EA2 CH: JF
	BOOK:	PD:
	SHEET: 2 OF 2 FILE NO: 8101-84-08	DATE: 10-31-08
	ATWELL-HICKS Engineering • Surveying • Planning Environmental • Water/Wastewater 888 858 4288 www.atwell-hicks.com MICHIGAN ILLINOIS OHIO FLORIDA	
SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN		



CLIENT K4 ARCHITECTURE	JOB# 06000624.30	CAD 06000624EA2
	DR. ME	CR. JF/DSB
EXHIBIT D	BOOK	PL
	SHEET 1 OF 2	DATE 11-08-06
STORM DETENTION EASEMENTS	FILE NO. 3101-84-03	
	ATWELL-HICKS	
SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	Engineering • Surveying • Planning Environmental • Water/Wastewater	
SCALE: 1 INCH = 60 FEET		
	888 850 4200 www.atwell-hicks.com MICHIGAN ILLINOIS OHIO FLORIDA	

EXHIBIT D

LEGAL DESCRIPTION: (UNDERGROUND STORM DETENTION EASEMENT)

A variable width easement located in the Northwest 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan, described as: Commencing at the Northwest corner of said Section 4; thence S00°00'00"W 287.53 feet along the West Line of said Section 4; thence N90°00'00"E 285.80 feet; thence 35.28 feet along the arc of a 540.00 foot radius non-tangential circular curve to the right, chord bearing S15°14'23"W 35.28 feet along the Westerly Right-of-Way Line of Beck Road (120' Wide); thence N72°53'19"W 21.36 feet for a PLACE OF BEGINNING; thence S00°00'00"W 11.68 feet; thence N89°44'41"W 8.13 feet; thence S00°00'00"W 41.60 feet; thence N90°00'00"W 106.20 feet; thence N00°00'00"E 53.25 feet; thence S90°00'00"E 114.33 feet to the Place of Beginning.

LEGAL DESCRIPTION: (STORM DETENTION EASEMENT)

A variable width easement located in the Northwest 1/4 of Section 4, T1N, R8E, City of Novi, Oakland County, Michigan, described as: Commencing at the Northwest corner of said Section 4; thence S00°00'00"W 287.53 feet along the West Line of said Section 4; thence N90°00'00"E 285.80 feet; thence 303.81 feet along the arc of a 540.00 foot radius non-tangential circular curve to the right, chord bearing S29°29'08"W 299.82 feet along the Westerly Right-of-Way Line of Beck Road (120' Wide); thence 1.92 feet along the arc of a 660.00 foot radius reverse circular curve to the left, chord bearing S45°31'09"W 1.92 feet for a PLACE OF BEGINNING; thence continuing 72.65 feet along the arc of a 660.00 foot radius reverse circular curve to the left, chord bearing S42°16'57"W 72.61 feet; thence N90°00'00"W 22.00 feet; thence N00°00'00"E 64.42 feet; thence S90°00'00"E 60.32 feet; thence S44°33'51"E 15.01 feet to the Place of Beginning.

CLIENT K4 ARCHITECTURE	JOB: 06000824.30	CAD 06000624EA1
	DR: ME	CH: JF/DSS
EXHIBIT D STORM DETENTION EASEMENTS LEGAL DESCRIPTIONS	BOOK	PL
	SHEET 2 OF 2	DATE 10-31-08
	FILE NO. 5101-84-04	
SECTION 4 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	ATWELL-HICKS Engineering • Surveying • Planning Environmental • Water/Wastewater 888 850 4200 www.atwell-hicks.com MICHIGAN ILLINOIS OHIO FLORIDA	

Location Map

Fifth Third Bank



Map Author: Brian Coburn, PE
Date: 7/13/09

Version #: 1.0

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.



City of Novi
Engineering Division
Department of Public Services
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

