



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item G
July 2, 2007

SUBJECT Acceptance of a Conservation Easement for Brooktown Village, located on the south side of Grand River Avenue, between Meadowbrook Road and Novi Road covering 3.978 acres of woodlands, wetlands and wetlands buffer.

SUBMITTING DEPARTMENT: Community Development ^{Plans}

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

The petitioner, Brooktown Village Venture, LLC (ADCO) has submitted a Final Site Plan for final approval for Brooktown Village, a mixed use residential/commercial/office development, and known as SP 05-24. The City Council previously approved the Preliminary Site Plan on March 6, 2006. As required by the Special Development Option Agreement entered into between the City and the developer, the Conservation Easement is required to be executed before the Final Site Plan receives approval. Staff continues to work with the developer on other issues needed before the final site plan can be approved administratively.

The conservation easement covers a total of 3.978 acres which represents 14.95 percent of the 26.603 acre site. The exhibit labeled "Conservation Easement," graphically depicts the area being preserved, which is primarily located on the south and west sides of the site.

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

RECOMMENDED ACTION: Acceptance of a Conservation Easement for Brooktown Village, located on the south side of Grand River Avenue, between Meadowbrook Road and Novi Road covering 3.978 acres of woodlands, wetlands and wetlands buffer.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

Conservation Easement and Exhibits

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this ~~22nd~~ day of ~~May~~, 2007, by and between **Brooktown Village Venture, L.L.C.**, whose address is **21600 Novi Road, Suite 700, Novi, Michigan 48375** (hereinafter the "Grantor"), and the City of Novi, and its successors or assigns, whose address is 45175 W. Ten Mile Road, Novi, MI 48375, (hereinafter the "Grantee").

RECITATIONS:

A. Grantor owns a certain parcel of land situated in Section 23 of the City of Novi, Oakland County, Michigan, described in **Exhibit A**, attached hereto and made a part hereof (the "Property"). Grantor has received final site plan approval for construction of a **Commercial and Residential** development on the Property, subject to provision of an appropriate easement to permanently protect the woodlands (including replacement trees therein), wetlands, wetland buffers, and wetland mitigation areas thereon from destruction or disturbance. Grantor desires to grant such an easement in order to protect the area.

B. The Conservation Easement Areas (the "Easement Areas") situated on the Property are more particularly described on **Exhibit B**, attached hereto and made a part hereof, the second page of which contains a drawing depicting the protected area.

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 Conservation Easement, which shall be binding upon the Grantor, 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. This Conservation Easement is dedicated pursuant to Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act being MCL 324.2140, et. seq., upon the terms and conditions set forth herein as follows:

1. The purpose of this Conservation Easement is to protect the woodlands (including replacement trees therein), wetlands, wetland buffers, and wetland mitigation areas, as shown on the attached and incorporated **Exhibit B**. The subject areas shall be perpetually preserved and maintained, in their natural and undeveloped condition, unless authorized by permit from the City, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.

2. Except for and subject to the activities which have been expressly authorized by permit, including the permitted pathways and / or boardwalks, there shall be no disturbance of the woodlands, wetlands and/or vegetation within the Easement Area, including altering the topography of; placing fill material in; dredging, removing or excavating soil, minerals, or trees, and from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise altering or developing, and/or constructing, operating, or maintaining any use or development in the Easement Area.

3. No grass or other vegetation shall be planted in the Easement Areas with the exception of plantings approved, in advance, by the City in accordance with all applicable laws and ordinances.

4. All areas identified on Exhibit B as parks, open space, landscape easement areas, berm or scenic easement areas shall be forever reserved and preserved, in the condition specifically approved by the City in accordance with applicable laws and ordinances. Any landscaped areas or landscape amenities shall be maintained and repaired as needed by the condominium association.

5. This Conservation 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 Conservation Easement

6. In the event that the Grantor shall at any time fail to carry out the responsibilities specified within this Document, and/or in the event of a failure to preserve and/or maintain the wetland areas and/or protected woodlands in reasonable order and condition, the City may serve written notice upon the Grantor, 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 Grantor 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 the obligation, to enter upon the property, or cause its agents or contractors to enter upon the property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation, including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Grantor, and such amount shall constitute a lien on an equal pro rata basis as to all of the lots on the property. The City may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within 30 days of a billing to the Grantor, all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each lot, and shall accrue interest and penalties, and 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 Grantor and, in such event, the Grantor

shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

7. Within 90 days after the Conservation Easement shall have been recorded, Grantor, at its sole expense, shall place such signs defining the boundaries of the Easement Area and describing its protected purpose, as indicated herein.

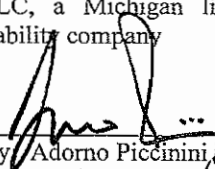
8. This Conservation Easement has been made and given for a consideration of a value less than One Hundred (\$ 100.00) Dollars and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax, pursuant to MSA 7.456(5)(a).

9. Grantor shall state, acknowledge and/or disclose the existence of this Conservation Easement on legal instruments used to convey an interest in the property.

IN WITNESS WHEREOF, Grantor and Grantee have executed the Conservation Easement as of the day and year first above set forth.

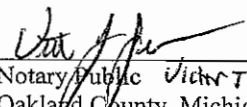
(Grantor)

Brooktown Village Venture,
LLC, a Michigan limited
liability company


By: Adorno Piccinini, KAAS-BROOKTOWN, LLC
Its: MEMBER & MANAGER

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 22 day of MAY,
2007, by ADORNO PICCINI, as the MANAGER of KAAS-BROOKTOWN, LLC,
MANAGER OF BROOKTOWN VILLAGE VENTURE, LLC


Notary Public VICTOR T. LEW
Oakland County, Michigan
My Commission Expires: 6-10-2010

(Grantee)
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

When recorded return to:
Maryanne Cornelius, Clerk
City of Novi
45175 W. Ten Mile

EXHIBIT "A"

PROPERTY DESCRIPTION

PART OF THE NORTHEAST ¼ OF SECTION 23, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST-WEST ¼ LINE OF SECTION 23 AND THE NORTH LINE OF "MEADOWBROOK GLENS SUBDIVISION NO. 3" AS RECORDED IN LIBER 145 OF PLATS, PAGE 1, OAKLAND COUNTY RECORDS. SAID POINT BEING S86°52'16"W 669.71 FEET FROM THE EAST ¼ CORNER OF SAID SECTION 23.; THENCE CONTINUING ALONG SAID LINE S86°52'16"W 1123.43 FEET; THENCE N02°51'49"W 1267.16 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF GRAND RIVER AVENUE (100' WIDE) THENCE ALONG SAID SOUTH LINE S73°44'09"E 1036.06 FEET; THENCE S02°33'23"E 303.70 FEET; THENCE S73°32'27"E 160.00 FEET; THENCE S02°23'56"E 565.91 FEET TO THE POINT OF BEGINNING. CONTAINING 26.603 ACRES OF LAND AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

EXHIBIT "B"

Conservation Easement "A"

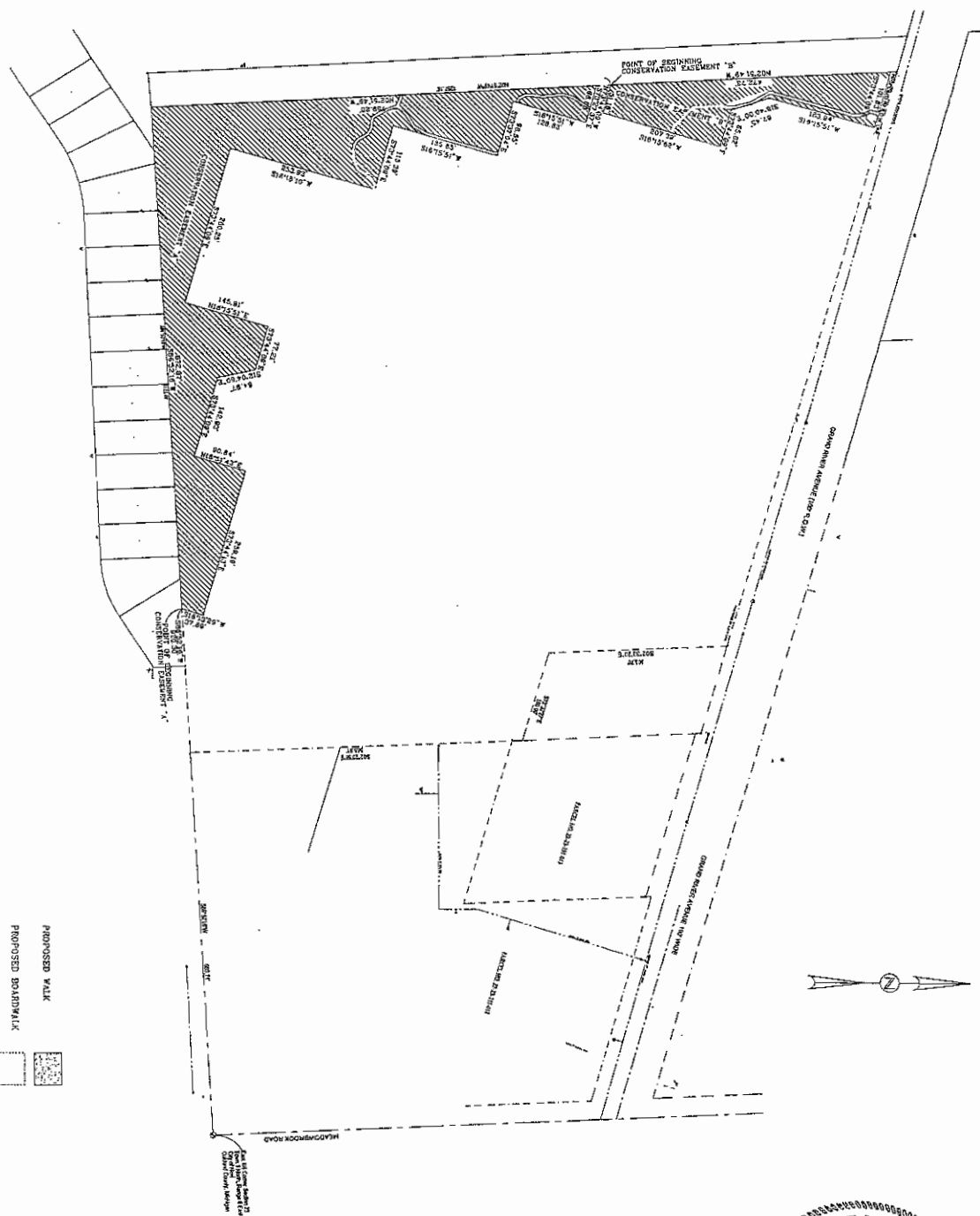
Part of the Northeast ¼ of section 23, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan and being more particularly described as follows:

Beginning at a point distant S86°52'16"W 920.36 feet from the East ¼ corner of said section 23. Thence S86°52'16"W 872.81 feet; thence N02°51'49"W 759.20 feet; thence S73°27'37"E 66.88 feet; thence S16°15'51"W 128.83 feet; thence S73°37'04"E 98.55 feet; thence S16°15'51"W 185.65 feet; thence S73°44'09"E 115.39 feet; S16°18'10"W 253.93 feet; thence S73°44'09"E 280.25 feet; thence N16°15'51"E 145.91 feet; thence S73°44'09"E 77.21 feet; thence S12°04'50"E 64.97 feet; thence S73°44'09"E 142.93 feet; thence N16°51'43"E 90.64 feet; thence S73°44'13"E 259.21 feet; thence S16°13'29"W 37.91 feet to the point of beginning.

Conservation Easement "B"

Part of the Northeast ¼ of Section 23, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan and being more particularly described as follows:

Beginning at a point distant S86°52'16"W 1793.17 feet and N02°51'49"W 783.86 feet from the east ¼ corner of said section 23. Thence N02°51'49"W 472.73 feet; thence S73°44'09"E 101.63 feet; thence S16°15'51"W 183.94 feet; thence S18°49'00"E 67.45 feet; thence S73°44'09"E 65.82 feet; thence S16°15'52"W 207.49 feet; thence N73°44'09"W 51.31 feet to the point of beginning.



PROPOSED WALK
 PROPOSED BOARDWALK

STATE OF MICHIGAN
 JOSEPH C. KAPELCAZ
 PROFESSIONAL SURVEYOR
 No. 24598
 LICENSED PROFESSIONAL SURVEYOR

Joseph C. Kapelczak

84 JK & ASSOCIATES INC. Scale: 1" = 40' Date: 10/03/06 Job No.: 0343 Sht. No.:	BROOKTOWN CITY OF NOVI	CONSERVATION EASEMENTS	Drawn: jck Designed: jck Checked: jck DATE: ISSUED 7/06	Consulting Engineers • Architects • Land Surveyors Environmental Services • Planners 4360 Grand River Avenue, #64, W. 48374 Phone (248) 348-2600 Fax (248) 348-2777
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City Attorney Review Letter

June 11, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-2500
Fax: 248-851-2158
www.secretwardle.com

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

Barbara McBeth, Deputy Community Development Director
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375

Re: **Brooktown SDO
Conservation Easement
Our File No. 660065 NOVI**

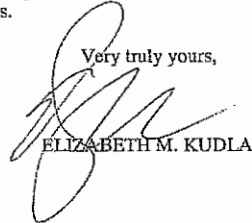
Dear Ms. McBeth:

We have received and reviewed the final executed Conservation Easement for the Brooktown SDO Project. It is acceptable as to form and content from a legal perspective, subject to review and approval of the exhibits by the appropriate City consultants. Once approval of the Exhibits has been confirmed, we recommend placement of the Conservation Easement City Council's Agenda for acceptance.

We note that the issues of pathway maintenance and public access to open space parks should be addressed within the Brooktown Master Deed as a separate issue from the Conservation Easement.

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

Very truly yours,



ELIZABETH M. KUDLA

EMK
Enclosure

C: Maryanne Cornelius, Clerk (w/original Enclosure)
Mark Spencer, Planner (w/Enclosure)
John A. Freeland, ECT Environmental (w/Enclosure)
Steve Cross, ADCO Group, LLC. (w/Enclosure)
Adorno Piccinini, ADCO Group, LLC. (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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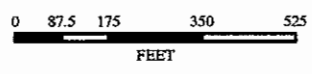
Location Map

Brooktown Village

Location Map



CITY OF NOVI PLAN REVIEW CENTER
Created by Mark Spencer
2/19/07
NOVI PLANNING DEPARTMENT
45175 W. TEN MILE ROAD
NOVI, MI 48375-3024
(248) 347-0475
WWW.CLNOVMI.US

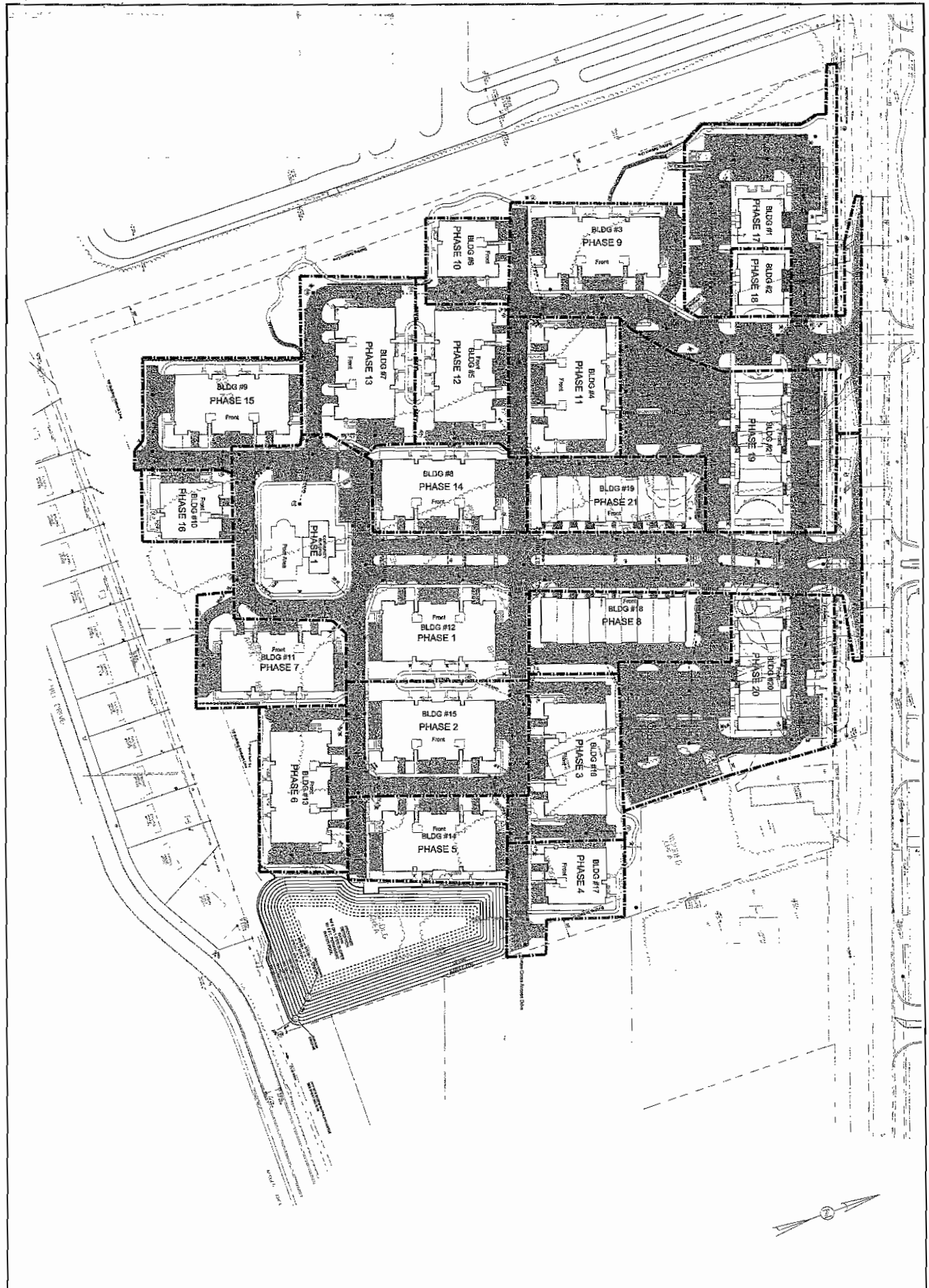


/brooktown location.mxd

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



2014 JCK & ASSOCIATES, PC
 C37
 DATE: 05/07/10
 DRAWN: JCK
 CHECKED: JCK
 SCALE: 1"=60'
 SHEET NO.: 05/213

BROOKTOWN
 CITY OF NOVI

PHASE PLAN

Drawn: JCK
 Designed: JCK
 Checked: JCK
 DATE: 05/07/10

JCK Consulting Engineers • Architects • Land Surveyors
 • Environmental Services • Planners
 45650 Grand River Avenue, Suite 10, Novi, MI 48276
 Phone: (248) 948-1800 Fax: (248) 242-2777