



CITY of NOVI CITY COUNCIL

**Agenda Item 3
November 24, 2008**

SUBJECT: Approval of Memorandum of Understanding regarding acceptance of roads within Vista Hills Condominium.

SUBMITTING DEPARTMENT: Engineering *124*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

At the August 11, 2008 meeting, City Council directed Administration to prepare the documentation necessary to facilitate an agreement between the city and the Vista Hills Homeowners Association in regard to the dedication of Vista Hills streets (minutes attached). Since that time, the City Attorney has worked with the Association's attorney on the attached Memorandum of Understanding, which spells-out the terms and conditions for the city's eventual acceptance of Vista Hills streets.

Once the Memorandum of Understanding is approved, the formal acceptance of Vista Hills streets will be brought to City Council for consideration at an upcoming meeting. Upon receipt of the \$190,000 payment from the Association, street pavement and storm structure repairs will be scheduled for completion during the 2009 construction season.

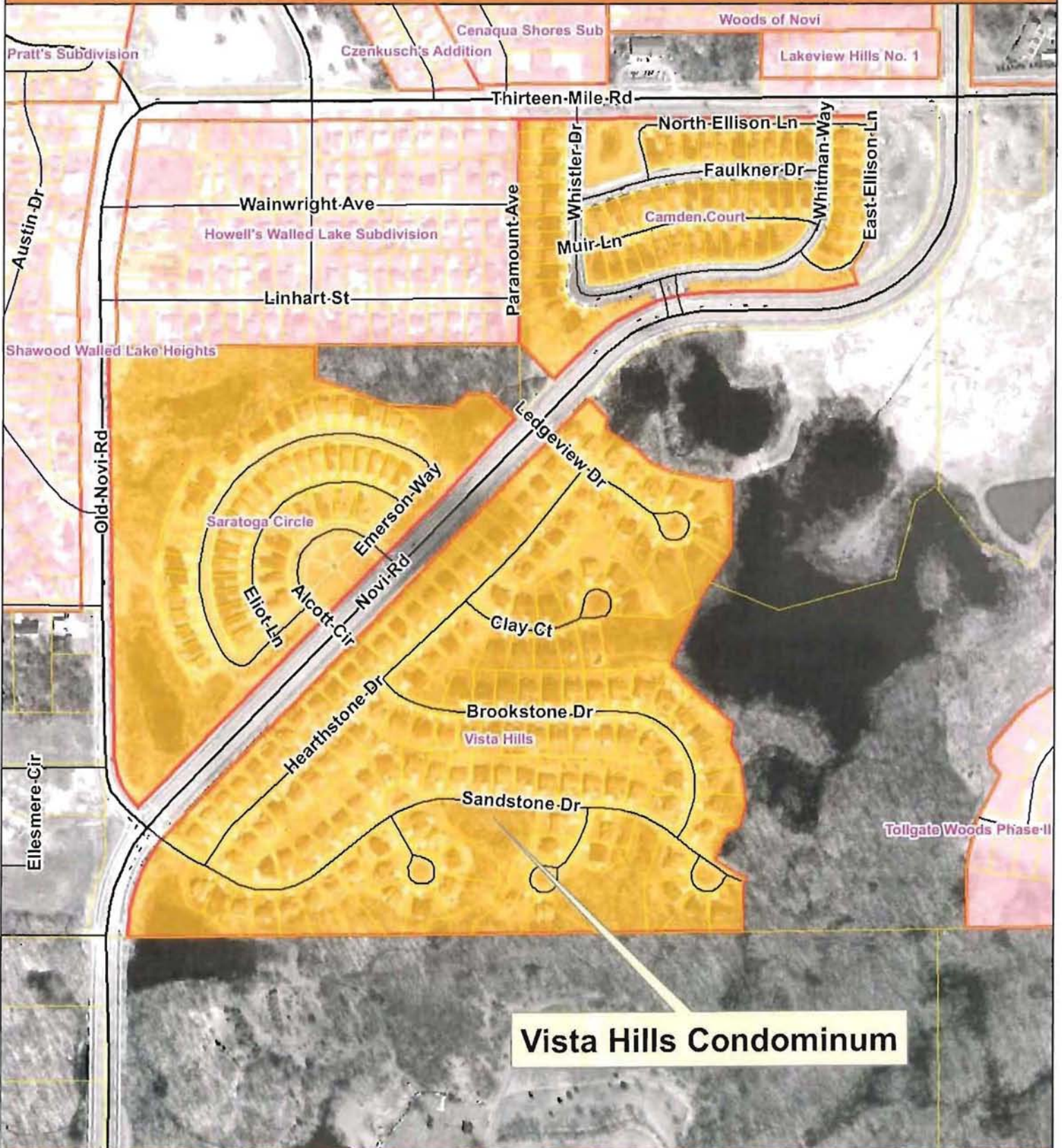
RECOMMENDED ACTION: Approval of Memorandum of Understanding regarding acceptance of roads within Vista Hills Condominium.

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

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

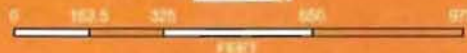


VISTA HILLS STREET ACCEPTANCE



Vista Hills Condominium

CITY OF NOVI
 ENGINEERING DIVISION
 45175 W TEN MILE RD
 NOVI, MI 48375-3024
 (248) 347-6404
 MAP AUTHOR: ROB HAYES



1 INCH = 413 FEET

MAP PRINT DATE: 1/16/16

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was prepared to meet National Map Accuracy Standards and use the most recent accurate location 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.

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, AUGUST 11, 2008 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

1. Consideration of a request from the Vista Hills Homeowners Association for the City to accept Vista Hills streets contingent on City's receipt of Association's \$190,000 payment for the City to make required pavement and storm structure repairs.

Mr. Pearson said this was the latest alternative to try to fulfill what Council had nodded heads about in the past to accept these streets. He said they had reviewed this and could recommend the payment and take advantage of the City's expertise to complete the work.

Member Margolis asked Mr. Hayes for information regarding the belief that the amount of money listed would be enough to make the kinds of repairs that were needed and what were the alternatives, if it turned out not to be.

Mr. Hayes said based on the existing conditions, it would be about a mile and a half of asphalt streets and most of the problems detected were distress cracking, especially around the drainage structures. He said a lot of the drainage structures had deteriorated since the punch list was prepared three years ago. Mr. Hayes said based on the bid price the homeowners association received the most recent lowest price was about \$142,000. He said they were offering \$190,000 and thought with the exception of some contingency beyond their wildest dreams, it was sufficient to cover this, get it out for bid, award it and get the work done. Mr. Hayes said their plan would be a little different than what they had planned in their scope. He said what the City would do was mill the entire surface, expose the base material and make sure it was adequate and the drainage was being conveyed away and then repave with a base course of asphalt and then a wearing course of asphalt. A lot of the structures had to be rebuilt or at a minimum tuck pointed to seal them on the inside and they would take care of that as well. He felt confident there was enough money to cover that. He said the only caveat was if they found something different than the report had shown, then that would be at risk.

Member Margolis asked him to address the advantage to the City of taking this and completing the repairs. Mr. Hayes said there was really no advantage to the City other than the City would be assisting a major neighborhood in getting their streets dedicated and accepted. He said it didn't benefit the City to have the streets added to the inventory. They would receive some money for maintenance, but it would cover just a portion of what was expended per lane mile of roadway. Member Margolis said she was looking for the alternative of having the homeowners association go with the bid that they had versus the City moving ahead. Mr. Hayes said expediency would be the main benefit because the City could get it done faster and more economically because the City could

buy construction cheaper than one association could. Member Margolis asked if there was a consideration of overseeing the quality of what was done. Mr. Hayes said they would have inspectors on site regardless of whether the association did it or the City did it. He said as part of their most recent estimate, they've included an amount that would go towards paying for City inspection services, over and above the \$140,000. She said if it's less than \$190,000, do they get a rebate or was this a one time payment to the City. Mr. Hayes said that would be something that would have to

be worked into an agreement before this took place. Member Margolis said then it would come back to Council and Mr. Hayes agreed.

CM-08-08-133 Moved by Margolis, seconded by Staudt; CARRIED

UNANIMOUSLY: To approve request from the Vista Hills Homeowners Association for the City to accept Vista Hills streets contingent on City's receipt of Association's \$190,000 payment for the City to make required pavement and storm structure repairs, and subject to appropriate documentation.

DISCUSSION

Mayor Pro Tem Capello said he always thought it was unfair that certain homeowners who have private roads had to pay the same amount of taxes as those that lived on public streets. Then on top of that, they had to maintain and plow their roads. He commented the problem they always ran into when they accepted these private roads was the condition of the roads. He said oftentimes the City ran into a problem that the private roads might have been constructed long ago under a different standard. He said oftentimes that was because the developer wanted to build cheaper roads and could have cut other corners along the way. He stated they were residents and he didn't have a problem accepting the roads or the money from the homeowners and the City could certainly do it for them. Mayor Pro Tem Capello said what he was concerned about was the City would take their \$190,000 and they would expect a lot more than the City could possibly do for that amount. He asked if there was going to be an agreement regarding what they would get for their money, that these were the streets to be repaired and nothing more.

Mr. Schultz said with the last process there was a draft of an agreement that had all of those kinds of details in it. He said they would have to change that paper work a little later and asked that the motion say "subject to appropriate documentation". He said whatever it turned out to be, if they had to bring it back to Council they would or if they could get it in some other form, they would let everyone know. He said there would have to be some written understanding regarding how it would work. Mayor Pro Tem Capello asked if the agreement was between the association and the City or between the individual homeowners

and would a certain majority have to sign or would they all have to sign off on this. Mr. Schultz thought it was between the association and the City and they would make sure they had the right signer when they formalized it. Members Margolis and Staudt accepted the friendly amendment.

Mayor Landry said Council oftentimes saw subdivisions on private streets come in and ask the City to take their streets over but they didn't often see a subdivision come forward with \$190,000. He said this was incredible and he really wanted to commend Vista Hills. He said they were a part of the Sandstone fiasco, they came to us, laid their issue before Council, worked with Council for a long time and they were really to be commended. Mayor Landry said he wholeheartedly supported this request.

Roll call vote on CM-08-08-133 Yeas: Margolis, Mutch, Staudt, Landry,

Capello, Crawford

Nays: None

Absent: Gatt

November 19, 2008

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

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

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

**Re: Vista Hills Condominium Street Acceptance
Memorandum of Understanding
Our File No. 55142.NOV**

Dear Mr. Hayes:

On August 11, 2008, City Council tentatively approved the request of the Vista Hills Homeowners Association to accept the roads within Vista Hills contingent upon, (1) the receipt of \$190,000 from the Association to enable the City to make required pavement and storm structure repairs to bring the roads into compliance with City Ordinance requirements; and (2) the provision of an appropriate agreement setting forth the terms of the arrangement.

We have prepared the enclosed Memorandum of Understanding Regarding Acceptance of Roads within the Vista Hills Condominium, which provides for the following:

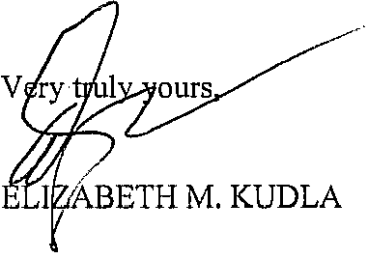
1. A one time payment by the Association to the City in the amount of one hundred and ninety thousand (\$190,000.00) dollars to enable the City to undertake repair/replacement of existing road and storm sewer defects;
2. The provision by the Association and/or individual home owners within the Condominium of all easements necessary to enable the City to undertake the repairs/replacement of roads and storm sewer improvements; and,
3. The provision by the Association of all legal and engineering documentation necessary to complete conveyance of the fee title to the Roads within the Condominium to the City.

If Council determines to proceed with this arrangement, acceptance of the roads will be scheduled for the next City Council Agenda as the Association has not finalized the legal descriptions for the documents necessary to convey the roads.

Once the Memorandum of Understanding has been approved by City Council and executed by the City, the signed original should be forwarded to the Association to execute in connection with the acceptance documents. The Exhibits to the Memorandum of Understanding will be supplemented at that time with the legal description of the roads prepared by the Association.

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elizabeth M. Kudla', with a long horizontal flourish extending to the right.

ELIZABETH M. KUDLA

EMK

Enclosure

C: Maryanne Cornelius, Clerk (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

VISTA HILLS CONDOMINIUM

**MEMORANDUM OF UNDERSTANDING REGARDING ACCEPTANCE OF ROADS WITHIN
THE VISTA HILLS CONDOMINIUM**

THIS MEMORANDUM OF UNDERSTANDING, dated _____, 2008 by and between the City of Novi, a Michigan municipal corporation ("City") whose address is 45175 West Ten Mile Rd., Novi, Michigan 48375, and the VISTA HILLS ASSOCIATION, a Michigan Nonprofit Corporation (the "Association"), whose address is 41486 Wilcox Rd., Plymouth, MI 48170, who represents itself hereby as the entity with responsibility and authority for operating and maintaining the General Common Elements of the Vista Hills Condominium (the "Condominium"), including but not limited to the roads and the storm sewer improvements within the roads, pursuant to the Third Amended and Restated Master Deed for Vista Hills recorded at Liber 38148, Pages 143 through 196, Oakland County Records, and amendments thereto, being Oakland County Condominium Subdivision Plan No. 822 (the "Master Deed").

RECITATIONS:

The roads within the Condominium were developed as private roads (the "Roads"), and are described in the attached and incorporated Exhibit A. The Association desires to complete dedication of the Roads and storm sewer improvements located within the Roads, to the City for public use and maintenance subject to the conditions and requirements set forth in this agreement. The City has agreed to accept the Roads (including the storm sewer improvements within the road right-of-way, together hereinafter to be known as the "Roads") as public, and to make certain improvements or repairs to the Roads to bring them into compliance with City of Novi Design and Construction Standard Requirements and as may be set forth in a certain plan (the "Plan") prepared by the City, which Plans attached hereto and incorporated as Exhibit B.

The repair/replacement and acceptance of the Roads within the Condominium is contingent upon (1) a one-time payment (the "Payment") by the Association to the City in the amount of one hundred and ninety thousand (\$190,000.00) dollars to enable the City to undertake repair/replacement of existing road and storm sewer defects listed in the Plans; (2) the provision by the Association and/or individual home owners within the Condominium of all easements necessary to enable the City to undertake the repairs/replacement of roads and storm sewer improvements as set forth in the Plans; and (3) the provision by the Association of all legal and engineering documentation necessary to complete conveyance of the fee title to the Roads within the Condominium to the City.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement. The City and Association enter into this Memorandum of Understanding for the purpose of setting forth the mutual expectation that the City will complete repairs/replacement of the road and storm sewer improvements deemed defective as set forth in the Plan in exchange for payment in the amount of one hundred and ninety thousand (\$190,000.00) dollars by the Association for the costs of repair/replacement, and then the City will accept the Roads for public use and maintenance.

2. Consideration. The Association shall pay the City a one-time payment of \$190,000.00 to cover the cost of repair/replacement of road and storm sewer improvements as set forth in the Plan attached as Exhibit B. The Payment shall also be used to cover legal expenses incurred by the City for preparation of the documents described in Paragraph 3 below. Upon receipt of the total amount of \$190,000.00, and original, fully executed versions of the documents set forth in Paragraph 3, below, the City shall take the actions necessary to complete the repair/replacement of the items set forth in the Plans.

3. Acceptance Documents. In order to convey legal title of the Roads to the City, the Association shall provide the following legal documents which have been approved and executed by a majority vote of the Association's Board of Directors in accordance with Article VII, Section 2 of the Master Deed and Article VIII, Section 1.H of the Second Amended and Restated Bylaws for Vista Hills:

- a. A Warranty Deed conveying the Roads to the City of Novi. The legal description to the Warranty Deed should contain a metes and bounds legal description of the Roads to be dedicated.
- b. A Bill of Sale to the City for the road paving within the road right of way to be dedicated and accepted.
- c. An Amendment to the Vista Hills Master Deed removing the Roads from the Condominium, by removing the metes and bounds legal description of the Roads from Article II of the Master Deed.
- d. Replat No. 2 of the Vista Hills Condominium Subdivision Plan (Exhibit B to the Master Deed) depicting the Roads as "public" rather than "general common elements."
- e. Resolution of the Board of Directors approving the dedication of the Roads and the execution of the Acceptance Documents.

4. Temporary Construction Easements. The Association shall grant the City any and all Temporary Construction Easements involving General Common Elements of the condominium necessary to complete repair/replacement of the road and storm sewer improvements set forth in the Plans. The Association, upon reasonable advance notice from the City of its needs, shall make every effort to obtain from the individual Co-Owners of the Condominium, for the benefit of the City, any and all Temporary Construction Easements

involving the individually owned Units in the condominium necessary to complete repair/replacement of the road and storm sewer improvements set forth in the Plans. The Association shall reimburse the City for costs incurred in condemning necessary easements that cannot be obtained voluntarily by the Association from unit owners (both costs of proceedings and compensation).

5. Association's Warranty as to Ownership. Association hereby warrants that it is the entity with the legal responsibility for operation and maintenance of the General Common Elements, including, but not limited to the Roads, within Condominium, and that it has the full and exclusive authority to execute this Agreement, and all documents necessary to convey the Roads to the City for public use and maintenance pursuant to the rights reserved to the Association in the Master Deed and the Condominium Act.

6. Timing. It is agreed by the Association and the City that the City will begin plowing the Roads within the Condominium this Winter, notwithstanding the fact that the dedication may not yet be complete, and that all repairs required to be made by the City as set forth in the Plan attached as Exhibit B shall be commenced in the Spring of 2009 and shall be completed as soon as practical thereafter.

7. Severability. Each covenant, requirement, obligation and provision contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event one or more of the covenants, requirements, obligations or provisions shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining covenants, requirements, obligations and provisions shall nevertheless remain in full force and effect.

8. Lawful Document. The Association and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitution of Michigan and the United States of America. Furthermore, Association fully accepts and agrees to the final terms, conditions, requirements, and obligations of this Agreement, and Association shall not be permitted in the future to claim that the effect of this Agreement results in an unreasonable limitation upon use of all or any portion of the Condominium, or claim that enforcement of this Agreement causes an inverse condemnation or taking of all or any portion of such Condominium. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the Condominium for the Condominium, and are, without exception, clearly and substantially related to the City's legitimate interests in protecting the public health, safety, and general welfare.

9. Applicable Law. This Agreement shall be interpreted and construed in accordance with Michigan law and shall be subject to enforcement only in Michigan courts.

10. Current and Future Owners and Associations. As used in this Agreement, the term "Association" shall mean and include the corporate Association and its individual members, as well as all future and successor persons and entities that become owners of all or any portion of the Condominium.

11. Headings. The headings contained herein are for the convenience of the parties and are not to be used in construing or interpreting this Agreement.

12. Effective Date. This Agreement is deemed effective as of the date first written above.

“ASSOCIATION”

VISTA HILLS ASSOCIATION, a Michigan
Non-profit Corporation

By: _____

Its: President

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the President of VISTA HILLS ASSOCIATION, a Michigan Nonprofit Corporation, on behalf of the Corporation.

Notary Public
_____ County, Michigan
My Commission Expires: _____

“CITY”:

CITY OF NOVI,
a Michigan municipal corporation

BY: _____
David Landry, Mayor

BY: _____
Maryanne Cornelius, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged, signed and sworn to before me on this _____ day _____, 2008, by David Landry, Mayor and Maryanne Cornelius, Clerk of the City of Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

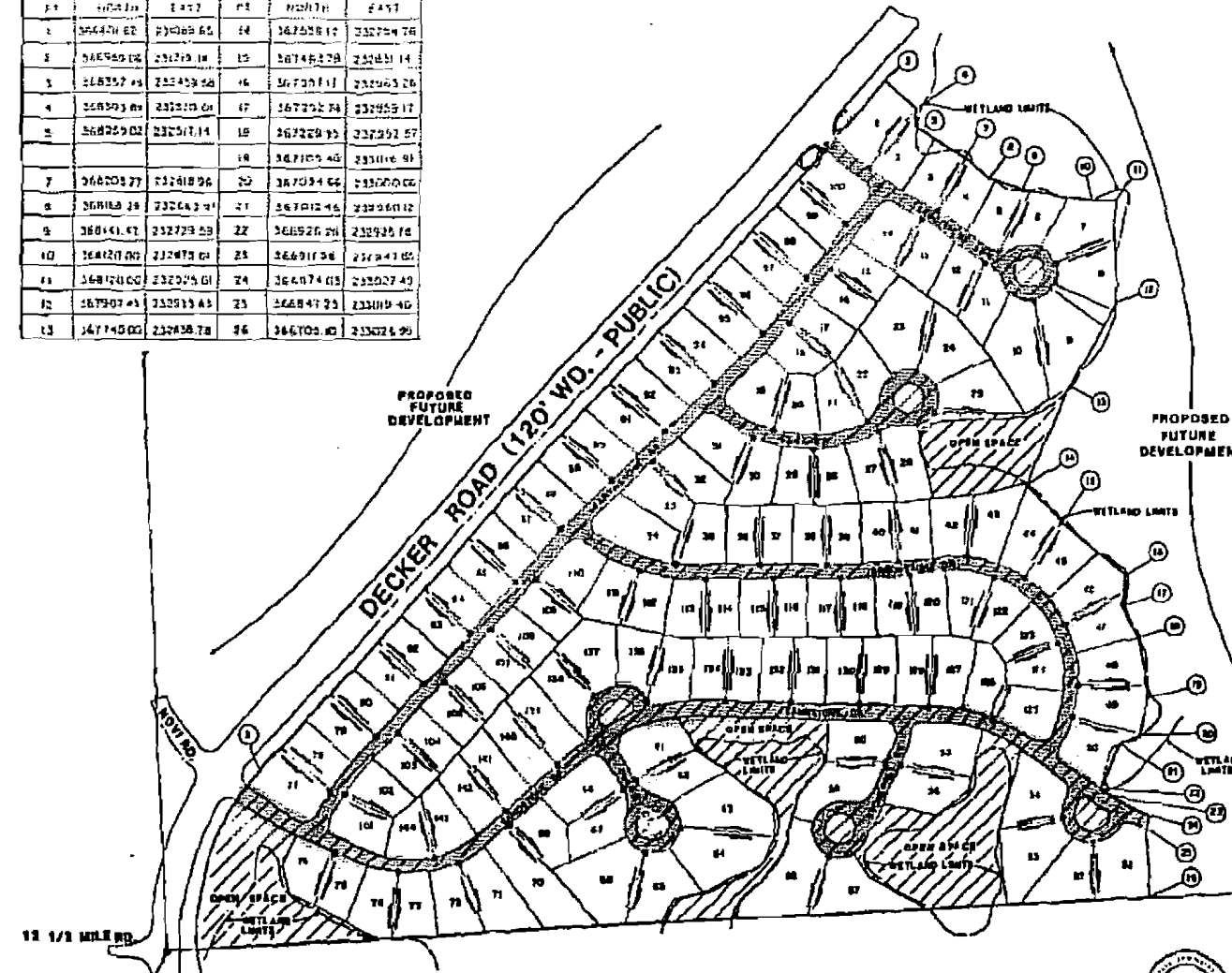
EXHIBIT A

Exhibit B

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Exhibit A

COORDINATE VALUES					
PT	NORTHING	EASTING	PT	NORTHING	
1	366470.62	232109.65	24	367258.14	232704.74
2	366790.02	232119.14	25	367462.78	232821.14
3	368357.43	232409.24	26	367338.11	232963.26
4	368303.84	232219.04	27	367202.54	232959.17
5	368259.02	232117.14	19	367228.93	232924.57
			18	367189.45	232916.91
7	368209.27	232418.96	20	367094.66	232870.02
8	368188.28	232423.21	21	367012.46	232836.12
9	368141.47	232729.23	22	366926.24	232783.78
10	368120.00	232673.01	23	366916.06	232741.02
11	368120.00	232673.01	24	366874.03	232627.49
12	367907.43	232513.43	25	366841.23	232489.46
13	367145.00	232438.73	26	366703.42	232324.20



N

0 50 100 200 300
25 75
SCALE FEET

LOCATION MAP
SEE SCALE

LEGEND

GENERAL COMMON ELEMENT

LIMITS OF OWNERSHIP (UNIT BOUNDARY)

⑫ BOUNDARY COORDINATE DESIGNATION

○ UNIT COORDINATE LOCATION

UNIT BOUNDING DIRECTION

Roadway to be Dedicated

- NOTES**
1. REFER TO UNIT DATA SHEET #1 FOR ALL UNIT SQUARE FOOTAGE & COORDINATE, BEARING AND FINISHED GRADE ELEVATIONS.
 2. REFER TO UNIT BEARING SHEETS RELIANT FOR ALL UNIT BEARINGS AND DISTANCES.
 3. ALL UNIT BOUNDARIES ARE DEMONSTRATED AS LIMITS OF OWNERSHIP.
 4. ALL ROADWAYS AND OPEN SPACE AREAS WITHIN THE CONDEMNATION PANEL ARE DEMONSTRATED AS GENERAL COMMON ELEMENT.
 5. ALL SIDEWALKS WILL BE SHOWN ON AS-BUILT DRAWINGS.

WEST 1/4 CORNER SECTION 11 T.1 N., R.2 E.



Egner F. Egner

8-24-94		PROPOSED											
<table border="1"> <tr><th>REV</th><th>DESCRIPTION</th></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>		REV	DESCRIPTION									<p>VISTA HILLS</p> <p>SITE PLAN</p> <p>REINFORCEMENT</p> <p>10% PAVED & PAVED DRIVEWAYS</p> <p>10% PAVED SIDEWALKS</p> <p>10% PAVED BIKEWAYS</p> <p>10% PAVED PLAY AREAS</p>	
REV	DESCRIPTION												
<p>WEST 1/4 CORNER SECTION 11 T.1 N., R.2 E.</p>		<p>SHEET NO. 5</p>											

