



CITY of NOVI CITY COUNCIL

**Agenda Item 2
June 7, 2010**

SUBJECT: Acceptance of a Highway & Utility Easement along an existing segment of Fountain Walk Drive between Donelson Drive and Cabaret Drive from International Transmission Company (ITC), including an area for potential future extension of Fountain Walk Drive west of Cabaret Drive.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *B/C*

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

BACKGROUND INFORMATION:

The existing segment of Fountain Walk Drive between Donelson Drive and Cabaret Drive does not currently have right-of-way or an easement over the roadway (shown on attached location map). The existing road segment, including the typical 70-foot wide right-of-way for this type of collector road, spans two parcels: approximately 49 feet on the International Transmission Company (ITC) parcel along the power lines, and approximately 21 feet on the Twelve Mile Crossing development owned by HHT Devco, LLC (see enclosed Exhibit B). Through the street acceptance process it was discovered that proper right-of-way had not been granted following the road's construction by the previous developers of Fountain Walk. Staff initiated the process to acquire the right-of-way from the parcels involved. ITC has partnered with the City to develop the attached Highway & Utility Easement granting access over their portion of the roadway (see attached easement review from Beth Kudla, dated May 26, 2010). Staff has begun the process to acquire an easement over the portion needed from HHT Devco for the road.

The easement being granted by ITC includes an area to accommodate a potential future road extension to the west beyond Cabaret. This road extension has been considered due to the potential economic benefit to the area, including the large 31-acre parcel owned by Madias Brothers, Inc. to the west of Cabaret that extends from Fountain Walk Drive to Twelve Mile Road. The future road extension would require an additional easement from the Madias Brothers parcel. Exhibit A (attached) shows the easements on all of the parcels for Fountain Walk Drive and a future extension of the road; while Exhibit B shows only the easements on the ITC parcel.

RECOMMENDED ACTION: Acceptance of a Highway & Utility Easement along an existing segment of Fountain Walk Drive between Donelson Drive and Cabaret Drive from International Transmission Company (ITC), including an area for potential future extension of Fountain Walk Drive west of Cabaret Drive.

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

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

MAP INTERPRETATION NOTICE

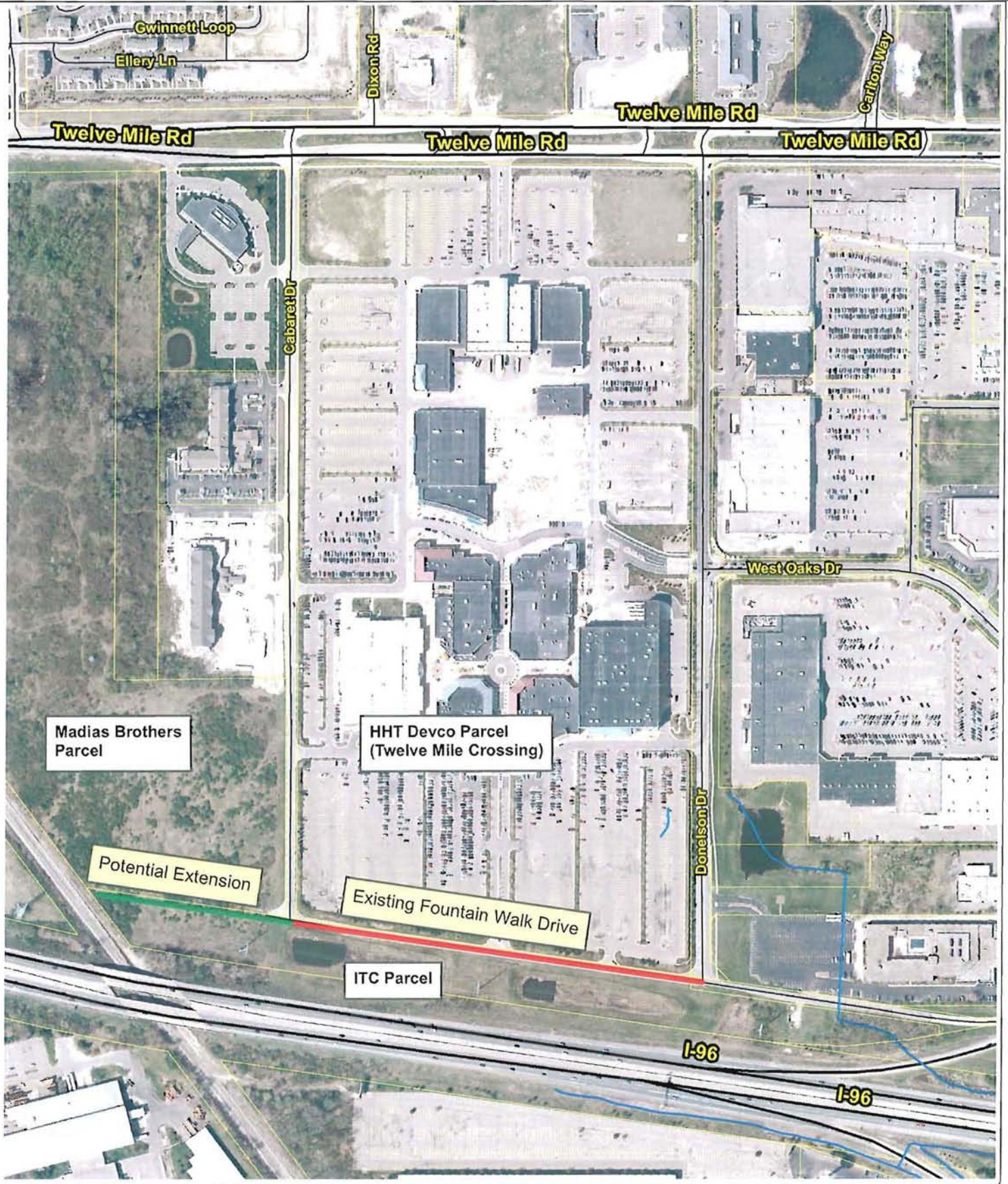
Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate 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



0 55 110 220 330 440
Feet

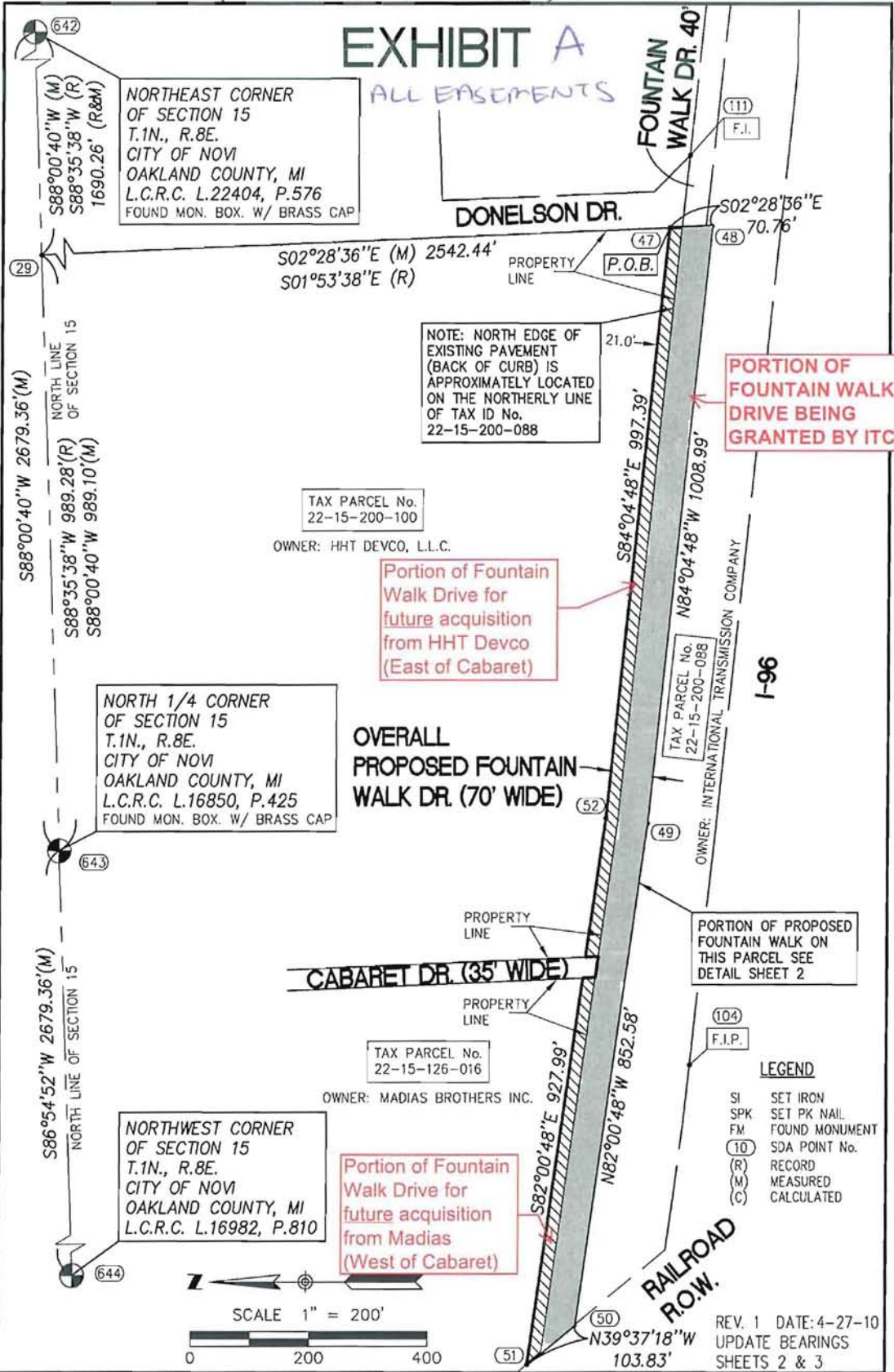
FOUNTAIN WALK DRIVE LOCATION MAP



(FOR REFERENCE)

EXHIBIT A

ALL EASEMENTS



NORTHEAST CORNER OF SECTION 15
 T.1N., R.8E.
 CITY OF NOVI
 OAKLAND COUNTY, MI
 L.C.R.C. L.22404, P.576
 FOUND MON. BOX. W/ BRASS CAP

NORTH 1/4 CORNER OF SECTION 15
 T.1N., R.8E.
 CITY OF NOVI
 OAKLAND COUNTY, MI
 L.C.R.C. L.16850, P.425
 FOUND MON. BOX. W/ BRASS CAP

NORTHWEST CORNER OF SECTION 15
 T.1N., R.8E.
 CITY OF NOVI
 OAKLAND COUNTY, MI
 L.C.R.C. L.16982, P.810

NOTE: NORTH EDGE OF EXISTING PAVEMENT (BACK OF CURB) IS APPROXIMATELY LOCATED ON THE NORTHERLY LINE OF TAX ID No. 22-15-200-088

TAX PARCEL No. 22-15-200-100
 OWNER: HHT DEVCO, L.L.C.

Portion of Fountain Walk Drive for future acquisition from HHT Devco (East of Cabaret)

OVERALL PROPOSED FOUNTAIN WALK DR. (70' WIDE)

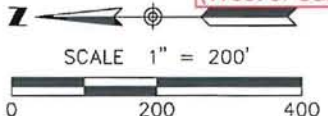
TAX PARCEL No. 22-15-126-016
 OWNER: MADIAS BROTHERS INC.

Portion of Fountain Walk Drive for future acquisition from Madias (West of Cabaret)

PORTION OF FOUNTAIN WALK DRIVE BEING GRANTED BY ITC

PORTION OF PROPOSED FOUNTAIN WALK ON THIS PARCEL SEE DETAIL SHEET 2

- LEGEND**
- SI SET IRON
 - SPK SET PK NAIL
 - FM FOUND MONUMENT
 - (10) SDA POINT No.
 - (R) RECORD
 - (M) MEASURED
 - (C) CALCULATED

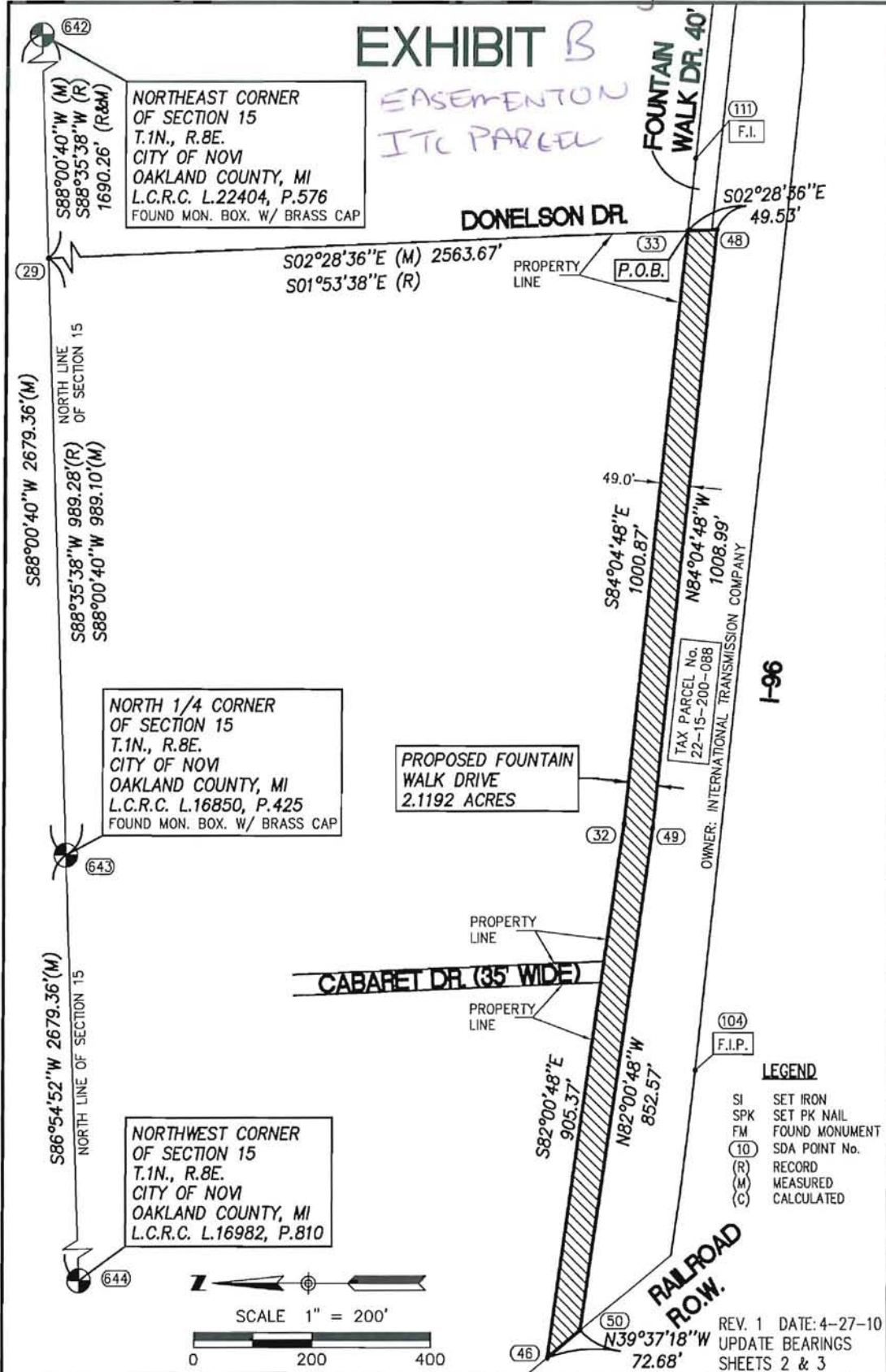


SPALDING DeDECKER ASSOCIATES, INC.
 ENGINEERS SURVEYORS
 905 SOUTH BLVD. EAST
 ROCHESTER HILLS, MI 48307
 PH: (248) 844-5400 FAX: (248) 844-5404
 www.sdo-eng.com

DRAWN: S.CLARK	DATE: 02-19-10
CHECKED: M.DEDECKER	DATE: 02-26-10
MANAGER: M.DEDECKER	SCALE: 1" = 200'
JOB No. NV09-008	SHEET: 1 OF 3
SECTION 15 TOWN 1 NORTH RANGE 8 EAST	
CITY OF NOVI	OAKLAND COUNTY, MI

(FOR REFERENCE)

EXHIBIT B EASEMENT ITC PARCEL



NORTHEAST CORNER
OF SECTION 15
T.1N., R.8E.
CITY OF NOVI
OAKLAND COUNTY, MI
L.C.R.C. L.22404, P.576
FOUND MON. BOX. W/ BRASS CAP

NORTH 1/4 CORNER
OF SECTION 15
T.1N., R.8E.
CITY OF NOVI
OAKLAND COUNTY, MI
L.C.R.C. L.16850, P.425
FOUND MON. BOX. W/ BRASS CAP

NORTHWEST CORNER
OF SECTION 15
T.1N., R.8E.
CITY OF NOVI
OAKLAND COUNTY, MI
L.C.R.C. L.16982, P.810

PROPOSED FOUNTAIN
WALK DRIVE
2.1192 ACRES

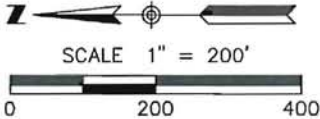
CABARET DR. (35' WIDE)

FOUNTAIN
WALK DR. 40'

I-96

RAILROAD
R.O.W.

- LEGEND**
- SI SET IRON
 - SPK SET PK NAIL
 - FM FOUND MONUMENT
 - (10) SDA POINT No.
 - (R) RECORD
 - (M) MEASURED
 - (C) CALCULATED



Spalding DeDecker
Associates, Inc.



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DRAWN: S.CLARK	DATE: 02-19-10
CHECKED: M.DEDECKER	DATE: 02-26-10
MANAGER: M.DEDECKER	SCALE: 1" = 200'
JOB No. NV09-008	SHEET: 2 OF 3
SECTION 15 TOWN 1 NORTH RANGE 8 EAST	
CITY OF NOVI	OAKLAND COUNTY, MI

REV. 1 DATE: 4-27-10
UPDATE BEARINGS
SHEETS 2 & 3

May 26, 2010

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

Rob Hayes, Public Services Director
CITY OF NOVI
26300 Delwal Drive
Novi, Michigan 48375

**Re: Fountainwalk Drive Highway & Utility Easement from ITC
Our File No. 55142 NOV**

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

Dear Mr. Hayes:

We have reviewed and approve the format and content of the Highway & Utility Easement donated to the City by ITC for the proposed extension of Fountainwalk Drive. The Easement includes both the proposed extension area and previously constructed portions of Fountainwalk Drive.

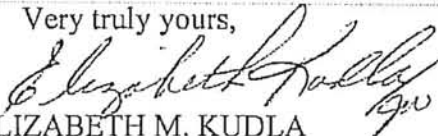
Though the Easement requires the City to indemnify ITC as permitted by law for damages and injury resulting out of the use of the Easement, the City's insurer has reviewed and approved the terms of the indemnity and has confirmed that the requirements for indemnity fall within the City's coverage.

Once the Highway & Utility Easement is accepted by the City, ITC should be added to the City's insurance policy as an additional insured with respect to the Easement in accordance with its terms. A Certificate of Insurance should be provided to ITC by the City's insurer.

Once executed by the City, the Highway & Utility Easement should be recorded with the Oakland County Register of Deeds by the City Clerk's Office in the usual manner.

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

Very truly yours,


ELIZABETH M. KUDLA

EMK

C: Maryanne Cornelius, Clerk
Clay Pearson, City Manager
Barb McBeth, Deputy Community Development Director
Marina Neumaier, Assistant Finance Director
Tia Gronlund-Fox, Director of Human Resources
Ben Croy, Civil Engineer
Tom Beagan, ITC
Thomas R. Schultz, Esquire

HIGHWAY & UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that International Transmission Company, a Michigan corporation, whose address is 27175 Energy Way, Novi, Michigan 48377, (hereinafter the "Grantor"), for and in consideration of One Dollar, receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to the City of Novi, a Michigan Municipal Corporation, whose address is 45175 West Ten Mile Road, Novi, Michigan 48375 (hereinafter the "Grantee"), being exempt pursuant to MCLA 207.505(a), and MCLA 207.526(a) a permanent easement for all public highway and utility purposes over, across and through land in the City of Novi, Oakland County, State of Michigan, described as follows:

A parcel of land located in the North 1/2 of Section 15, T1N, R8E, City of Novi, Oakland County, Michigan, described as follows: Commencing at the Northeast corner of said Section 15; thence along the North section line (also being the centerline of Twelve Mile Road), S88°00'40"W (Recorded as S88°35'38"W) 1690.26 feet; thence S02°28'36"E (Recorded as S01°53'38"E) 2563.67 feet to the point of beginning; thence continuing S02°28'36"E 49.53 feet; thence N84°04'48"W 1008.99 feet; thence N82°00'48"W 852.57 feet to a point on the Easterly line of the Railroad Right of Way; thence along said Easterly line N39°37'18"W 72.68 feet; thence S82°00'48"E 905.37 feet along the North property line of the Grantor's land; thence S84°04'48"E 1000.87 feet along the North property line of Grantor's land to a point of beginning. Containing 2.1192 acres of land.

Grantor specifically reserves the right to construct, reconstruct, enlarge, add to, operate and maintain overhead and underground electric transmission, distribution and communication lines and associated structures and equipment ("Grantor's Facilities") on, over and under the above described easement as long as Grantor's Facilities do not interfere with Grantee's easement. Said rights shall include the right to trim, cut down or remove any tree which is located within the above described easement.

This easement is granted without any warranties or covenants of title, and subject to all now existing easements, restrictions and encumbrances affecting the Easement area to which this easement would be subordinate under the recording acts or other applicable law of the State of Michigan. Furthermore, Grantor may grant other encumbrances over the above described land which, do not interfere with Grantee's easement.

Grantee must pay Grantor for all damages, losses or injuries to Grantor's Facilities caused by Grantee, its agents, employees, or independent contractors while constructing, operating or maintaining Grantee's easement.

Grantee and Grantee's contractors, at their own expense, must each maintain a general liability insurance policy that is satisfactory to ITC in form and substance. The policies must cover the liability assumed in this agreement for \$500,000 each person and \$1,000,000 each occurrence bodily injury, and \$500,000 each occurrence property damage. The policies must also include explosion damage, collapse, or damage

to underground property (commonly known as "XCU"). If Grantee is a governmental unit, then Grantee's contractor's policy must name Grantor as an additional insured. Grantee's policy must remain in effect as long as this easement agreement remains in effect. Grantee's contractors' policies must remain in effect during the time that the contractors are working in the Easement area.

Grantee must give ITC thirty (30) days written notice before any material change or cancellation becomes effective on the insurance policy described above.

To the extent allowed by law, grantee will indemnify Grantor (the Company, its officers, agents and employees) against any claims for injuries to persons or damages to property, or both, arising directly or indirectly out of the use of this easement by Grantee (the person, company or organization, its contractors, subcontractors, lessees, licensees and any of its or their agents or employees), but Grantee will not indemnify Grantor for claims arising out of Grantor's sole negligence.

If a construction lien is placed on the Easement area due to Grantee's activities in the Easement, then Grantee must discharge the lien by giving a bond or otherwise.

The terms of this indemnity will survive the termination of this easement.

Grantee and its contractors must maintain at least 20-foot clearance from any Grantor's equipment.

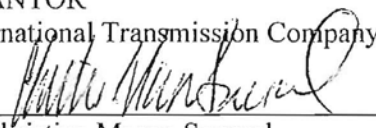
After Grantee completes any construction or maintenance work, Grantee must restore Grantor's property as nearly as possible to its original condition. This includes grading and reseeded all disturbed lawn areas and replacing any damaged landscaping.

Grantee may enter upon sufficient land adjacent to said easement for the purpose of exercising the rights and privileges granted herein during construction. Grantor agrees not to build or to convey to others permission to build any structures or improvements on, over, across, in, through, or under the above-described easement.

This instrument shall run with the land and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

Dated this 14th day of MAY, 2010.

GRANTOR
International Transmission Company

By: 
Christine Mason Soneral

Its: _____
Vice President and General Counsel – Utility Operations

GRANTEE
City of Novi, a Municipal Corporation

By: _____

Its: _____

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

On this 16th day of MAY, 2010, before me, personally appeared CHU STANISLAW MARON SOKRZAL, VICE PRESIDENT AND GENERAL COUNSEL, UTILITY OPERATIONS of International Transmission Company, a Michigan corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as his/her free act and deed.

Linda E. Sweeney
Notary Public,
WAYNE County, MI
My commission expires: 5/26/15

LINDA E. SWEENEY
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES May 26, 2015
ACTING IN COUNTY OF OAKLAND

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this _____ day of _____ 2010, by _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Oakland County, Michigan
My Commission expires: _____

Dafted by:
Elizabeth M. Kudla
30903 Northwestern Hwy
Farmington Hills, MI 48334

When recorded return to:
Maryanne Cornelius, Clerk
City of Novi
45175 W. Ten Mile Rd
Novi, MI 48375