



CITY of NOVI CITY COUNCIL

Agenda Item K
June 5, 2017

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Level One Bank (formerly Lotus Bank) located at the northeast corner of Twelve Mile Road and Dixon Road (parcel 22-10-400-013).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division GDM

CITY MANAGER APPROVAL: PA

BACKGROUND INFORMATION:

The developer for Level One Bank (formerly Lotus Bank) requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the commercial development located at the northeast corner of Twelve Mile Road and Dixon Road, as shown on the attached map.

The Storm Drainage Facility Maintenance Easement Agreement is a requirement of the Storm Water Management Ordinance and details the responsibilities of the property owner to properly maintain their privately owned on-site storm water system. The agreement also contains a provision that permits the City to perform maintenance on the privately owned on-site storm water system should the property owner fail to do so at the expense of the property owner.

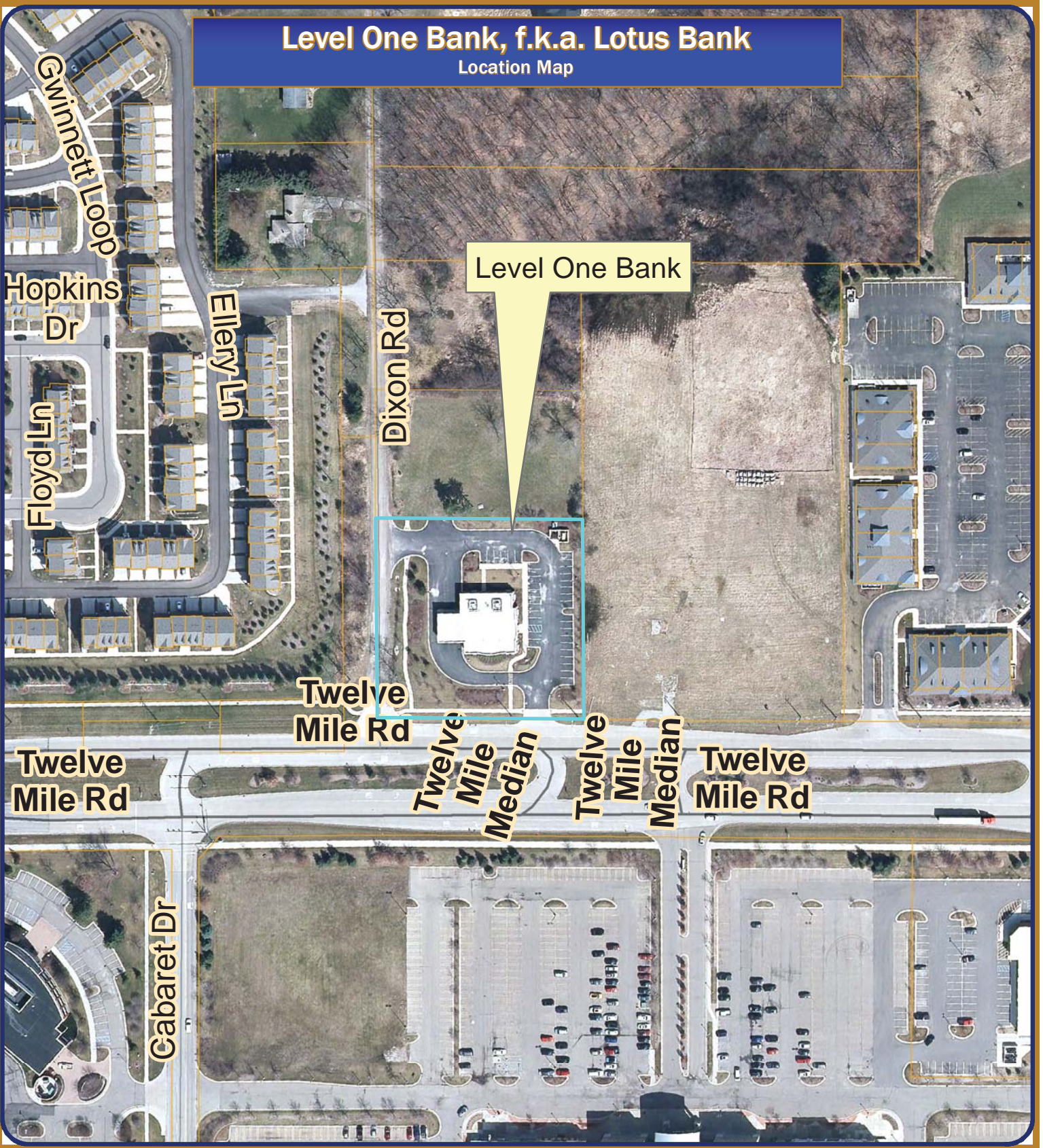
In this particular case, the property owner owns and agrees to maintain the underground storm water detention basin and pretreatment structure and is providing an access easement to these facilities. The owner is also responsible for maintaining the pipes and manholes leading to and from the on-site storm water detention system.

Provided that the title issue is resolved, the enclosed agreement has been favorably reviewed by the City's Engineering consultant; Spalding DeDecker Associates and the City Attorney, as described in the attached letter from Beth Saarela dated May 23, 2017, and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Level One Bank (formerly Lotus Bank) located at the northeast corner of Twelve Mile Road and Dixon Road (parcel 22-10-400-013).

Level One Bank, f.k.a. Lotus Bank

Location Map

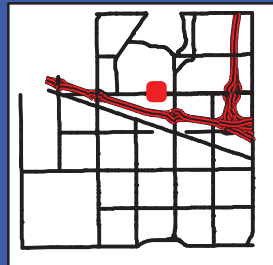


Map Author: Charles Athony
Date: 5/25/2017
Project:
Version #:

Amended By:
Date:
Department:

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
26300 Lee BeGole Drive
Novi, MI 48375
cityofnovi.org

Feet
0 30 60 120 180

1 inch = 167 feet





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

May 23, 2017

George D. Melistas, Engineering Senior Manager
CITY OF NOVI
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

**Re: Lotus Bank SP06-60
Storm Drainage Facility Maintenance Easement Agreement**

Dear Mr. Melistas:

We have previously received and reviewed, and enclosed please find the Storm Drainage Facility Maintenance Easement Agreement for storm water drainage and detention facilities serving the Lotus Bank (now Level One Bank) Property. The Storm Drainage Facility Maintenance Easement Agreement is in the City's standard format and is acceptable as provided, with the qualification that the Grantor name, "Lotus Bank," is not the name of the entity that owns the subject property, which is "Lotus Bancorp, Inc."

Lotus Bank did not respond to the requests for a replacement deed showing "Lotus Bancorp, Inc.," as the owner. In 2007, when the Agreement was executed, Lotus Bank, instead, provided the City with a copy of a Quit Claim Deed with the intent to change the title to the Property to "Lotus Bank." Lotus Bank, however, apparently never followed through and recorded the Quit Claim Deed that it executed. On that basis, like the deeds for 12 Mile and Dixon Road, the Agreement is subject to a challenge based on the name on the deed to the parcel being "Lotus Bancorp" instead of "Lotus Bank." A challenge is probably not very likely given that these are documents required pursuant to site plan approval for the bank property. Although the City is currently working with Level One Bank, the current property owner, with a goal toward fixing the title issue identified above, the enclosed Agreement may be accepted and recorded pending such resolution.

The original Storm Drainage Facility Maintenance Easement Agreement is on file with the City Clerk's Office. Once approved and executed by the City, the Agreement should be recorded with Oakland County Records by the City Clerk's Office.

George Melistas, Engineering Senior Manager

May 23, 2017

Page 2

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

Sincerely,

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

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

Elizabeth K. Saarela

Enclosures

- C: Cortney Hanson, Clerk (w/Enclosures)
- Charles Boulard, Community Development Director (w/Enclosures)
- Barb McBeth, City Planner (w/Enclosures)
- Theresa Bridges, Construction Engineer (w/Enclosures)
- Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
- Brittany Allen, Taylor Reynolds, and Ted Meadows, Spalding DeDecker (w/Enclosures)
- Sue Troutman, City Clerk's Office (w/Enclosures)
- Thomas R. Schultz, Esquire (w/Enclosures)

**STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT is made this 1ST day of MAY, 2007, by and between LOTUS BANK, whose address is 45650 GRAND RIVER, NOVI MI 48374 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (hereinafter the "City").

RECITATIONS:

A. Owner is the owner and developer of a certain parcel of land situated in Section 10 of the City of Novi, Oakland County, Michigan, described on the attached and incorporated Exhibit A (the "Property"). Owner has received final site plan approval for construction of a RETAIL/OFFICE development on the Property.

B. The RETAIL/OFFICE Development, shall contain certain storm drainage, detention and/or retention facilities, including but not limited to, a detention/sedimentation basin, for the collection, conveyance, storage, treatment and/or discharge of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage, detention and retention facilities, including all wetlands which are part of the system, to insure that the same continue to function as intended. The 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 areas and facilities 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 in the attached Exhibit B.

~~[Provide site specific storm water facility maintenance information per Section 12-244 of the Storm Water Management Ordinance. Attach an Exhibit B with description and/or tables providing an explanation of maintenance activities and a budget for maintenance and inspection for the first three years of operation. This section must contain the following statement, "The Owner and/or Association shall maintain a log of all inspection and maintenance activities and make the log available to City personnel as needed."] *This paragraph is explanatory and should be removed before submission of the agreement.~~

In the event that the 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 water drainage, detention and retention facilities in reasonable order and condition, the City may serve written notice upon the 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 Area as described and depicted in 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/Sedimentation Basin Easement Area described and depicted in 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 the Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be 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 Owner, and, in such event, the 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, 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.

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, their agents, heirs, successors, assigns and transferees.

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

OWNER
LOTUS BANK

[Signature]
By: Richard S. Garne
Its: VP
Executive Vice-President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 6th day of Aug, 2007,
by Richard Garne, as the Executive VP of Lotus Bank.

[Signature]
Notary Public
Oakland County, Michigan
My Commission Expires: 11-21-2013
J BURLEY
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission expires Nov. 21, 2013
Acting in the County of Oakland

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

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

602691v1

Exhibit A

PARCEL 2:

Part of the Southeast 1/4 of Section 10, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as beginning at the South 1/4 corner of Section 10 and proceeding thence along the North and South 1/4 line, also being the centerline of Dixon Road North 00 degrees 52 minutes 00 seconds West, 330.00 feet; thence due East, 264.00 feet; thence South 00 degrees 52 minutes 00 seconds East, 330.00 feet; thence along the South line of Section 10, also being the centerline of 12 Mile Road, due West 264.00 feet to the point of beginning. Except that part deceded to the City of Novi, as evidenced by Warranty Deed recorded in Liber 23026, Page 837.

BEING SURVEYED AS: Part of the Southeast 1/4 of Section 10, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Commencing at the South 1/4 of said Section; thence North 02 degrees 52 minutes 51 seconds West, 75.01 feet to the Point of Beginning; thence North 02 degrees 52 minutes 51 seconds West, 254.99 feet; thence North 88 degrees 00 minutes 40 seconds East, 264 feet; thence South 02 degrees 52 minutes 51 seconds East, 254.99 feet; thence South 88 degrees 00 minutes 40 seconds West, 264 feet to the Point of Beginning.

EXHIBIT B

LONG-TERM MAINTENANCE PLAN

Property Information: Lotus Bank
44350 Twelve Mile Road
Novi, Michigan

A. Physical Limits in the Storm Water Management System:

The underground storm water management system subject to this Long-term Maintenance plan is depicted on the Exhibit A of this easement and includes without limitation the storm sewers, manholes, catch basins, storm water inlet structure, underground detention system and storm outlet structure to the existing storm sewer.

B. Time Frame for Long-Term Maintenance Responsibility

Property owner is responsible for maintaining the underground storm water management system including complying with applicable requirements of the local or Wayne County soil erosion and sedimentation control program.

C. Long-term Maintenance Plan and Schedule.

Table 1 identifies the maintenance activities to be performed, organized by category (monitoring/inspections, preventative maintenance and remedial actions). Table 1 also identifies site-specific work needed to ensure that the underground storm water management system functions properly as designed.

ANNUAL ESTIMATED BUDGET FOR UNDERGROUND STORMWATER MAINTENANCE

1.	Inspection (two per year)	\$720.00
2.	Cleaning of Basins and Stormwater Treatment System.	<u>\$500.00</u>
	Total Operational and Maintenance cost annually	\$1,220.00

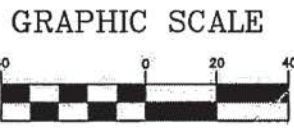
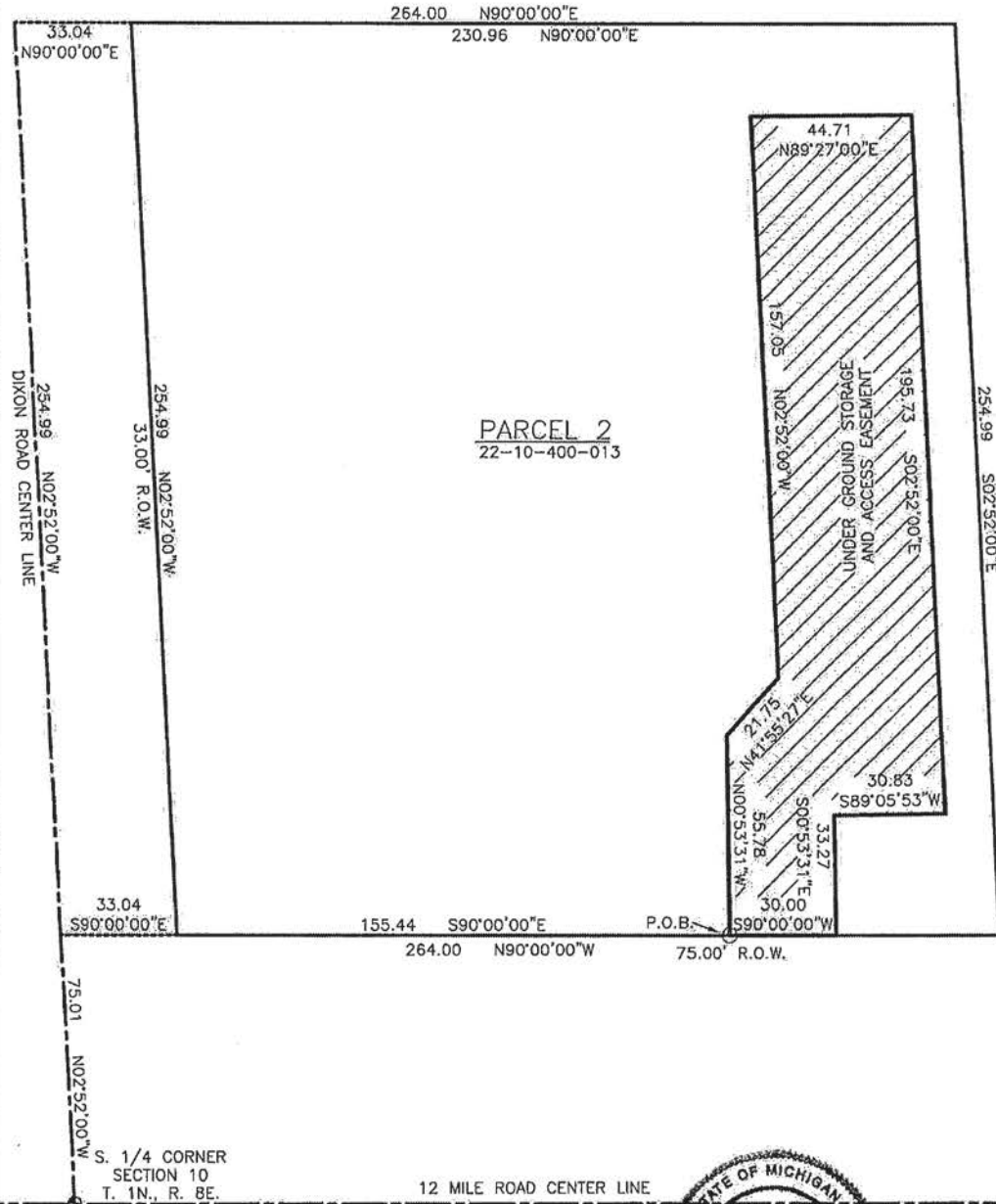
Table 1
 Long-Term Maintenance Schedule for Lotus Bank
 Novi, Oakland County, Michigan

Maintenance Activities	System Component					Frequency
	Catch basin, Inlets and Storm Sewer	Basin Inlets, Outlets & Grading	Stormwater Treatment System	Underground Detention System	Outlet Control Structure	
Monitoring / Inspection						
Inspect for sediment accumulation	X		X		X	Annually
Inspect for floatable, dead vegetation and debris			X			Annually and after major events.
Inspect all components during wet weather and compare to as-built plans.		X	X	X	X	Annually
Ensure means of access for maintenance remain clear / open.	X	X	X	X	X	Annually
Preventative Maintenance						
Remove sediment						As needed
Sweeping of paved parking lot.						As needed
Remedial Actions						
Structural repairs	X	X			X	As needed

UNDERGROUND STORAGE EASEMENT

INGRESS/EGRESS EASEMENT AREA
EXHIBIT C

PARCEL 1



(IN FEET)
1 inch = 40 ft.

UNDERGROUND STORAGE EASEMENT

INGRESS/EGRESS EASEMENT AREA
EXHIBIT C

LEGAL DESCRIPTION FOR PARCEL 2:

PART OF THE SOUTHEAST 1/4 OF SECTION 10, TOWN 1 NORTH,
RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN DESCRIBED AS:
COMMENCING AT THE SOUTH 1/4 OF SAID SECTION;
THENCE N. 02°52'00" W. 75.01 FT. TO THE POINT OF BEGINNING;
THENCE N. 02°52'00" W. 254.99 FT.;
THENCE N. 90°00'00" E. 264 FT.;
THENCE S. 02°52'00" E. 254.99 FT.;
THENCE S. 90°00'00" W. 264 FT. TO THE POINT OF BEGINNING.

UNDERGROUND STORAGE INGRESS/EGRESS EASEMENT LEGAL DES

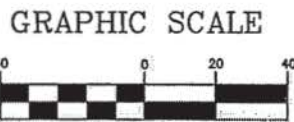
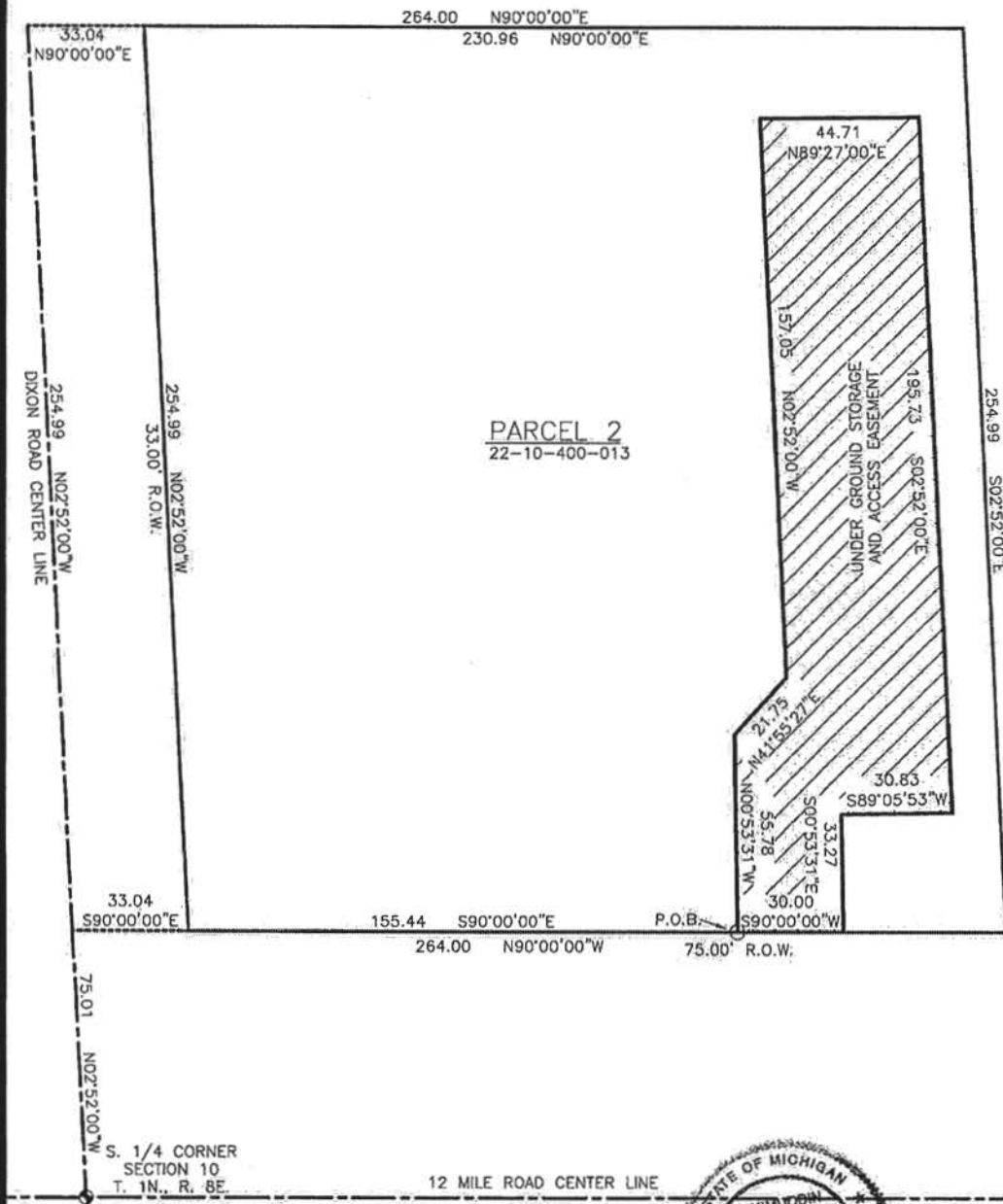
PART OF THE SOUTHEAST 1/4 OF SECTION 10, TOWN 1 NORTH,
RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN DESCRIBED AS:
COMMENCING AT THE SOUTH 1/4 OF SAID SECTION;
THENCE N. 02°52'00" W. 75.01 FT.
THENCE S. 90°00'00" E. 188.48 FT.
TO THE POINT OF BEGINNING;
THENCE N. 00°53'31"W. 55.78 FT.
THENCE N. 41°55'27"E. 21.75 FT.
THENCE N. 02°52'00"W 157.05 FT.
THENCE N. 89°27'00"E. 44.71 FT.
THENCE S. 02°52'00"E. 195.73 FT.
THENCE S. 89°05'53"W. 30.83 FT.
THENCE S. 00°53'31"E. 33.27 FT.
THENCE S. 90°00'00"W. 30.00 FT.
TO THE POINT OF BEGINNING.



UNDERGROUND STORAGE EASEMENT

DETENTION/SEDIMENTATION BASIN EASEMENT AREA
EXHIBIT D

PARCEL 1



(IN FEET)
1 inch = 40 ft.



[Handwritten signature]

UNDERGROUND STORAGE EASEMENT

DETENTION/SEDIMENTATION BASIN EASEMENT AREA
EXHIBIT D

LEGAL DESCRIPTION FOR PARCEL 2:

PART OF THE SOUTHEAST 1/4 OF SECTION 10, TOWN 1 NORTH,
RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN DESCRIBED AS:
COMMENCING AT THE SOUTH 1/4 OF SAID SECTION;
THENCE N. 02°52'00" W. 75.01 FT. TO THE POINT OF BEGINNING;
THENCE N. 02°52'00" W. 254.99 FT.;
THENCE N. 90°00'00" E. 264 FT.;
THENCE S. 02°52'00" E. 254.99 FT.;
THENCE S. 90°00'00" W. 264 FT. TO THE POINT OF BEGINNING.

DETENTION/SEDIMENTATION BASIN AREA EASEMENT LEGAL DESCR

PART OF THE SOUTHEAST 1/4 OF SECTION 10, TOWN 1 NORTH,
RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN DESCRIBED AS:
COMMENCING AT THE SOUTH 1/4 OF SAID SECTION;
THENCE N. 02°52'00" W. 75.01 FT.
THENCE S. 90°00'00" E. 188.48 FT.
TO THE POINT OF BEGINNING;
THENCE N. 00°53'31"W. 55.78 FT.
THENCE N. 41°55'27"E. 21.75 FT.
THENCE N. 02°52'00"W 157.05 FT.
THENCE N. 89°27'00"E. 44.71 FT.
THENCE S. 02°52'00"E. 195.73 FT.
THENCE S. 89°05'53"W. 30.83 FT.
THENCE S. 00°53'31"E. 33.27 FT.
THENCE S. 90°00'00"W. 30.00 FT.
TO THE POINT OF BEGINNING.