

CITY COUNCIL ACTION REPORT RECEIVED

May 5, 2009

MAY 05 2009

CITY OF TROY

CITY MANAGER'S OFFICE

TO: John Szerlag, Acting City Manager *JS*

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services *BPM*
 Steven J. Vandette, City Engineer *SV*
 Patricia A. Petitto, Real Estate Consultant, Greenstar & Associates, LLC *PA*

SUBJECT: Request for Approval of Purchase Agreement and Acceptance of Permanent Public Utility Easement & Grading and Temporary Construction Permit
 Rochester Road Improvements, Torpey to Barclay - Project No. 99.203.5 &
 Wattles Road Improvements, Bristol to Worthington – Project No. 01.106.5
 Parcel 50 – Sidwell #88-20-15-478-015 – Comerica Bank

Background:

- In connection with the proposed improvements to Rochester Road, from Torpey to Barclay, the Real Estate & Development Department received a Purchase Agreement, Permanent Public Utility Easement, and Grading and Temporary Construction Permit from Comerica Bank. This parcel is located at the northwest corner of Rochester Road and Wattles Road in the southeast ¼ of Section 15.

Financial Considerations:

- An appraisal was prepared by Raymond V. Bologna, CRE, MAI, State Certified Appraiser and reviewed by Kimberly Harper, Deputy Assessor and State Licensed Appraiser. Staff believes that \$356,200, plus closing costs for the acquisition of the property described in the purchase agreement; \$500 for the Permanent Public Utility Easement and \$200 for the Grading and Temporary Construction Permit are justifiable amounts for this acquisition.
- Eighty percent of these costs will be reimbursed from Federal funds. Funds for the City of Troy's share are included in the 2008-09 Major Road fund, account numbers 401479.7989.992035 and 401479.7989.011065.

Legal Considerations:

- The format and content of the purchase agreement, easement and permit are consistent with documents previously accepted by City Council.

Policy Considerations:

- The purpose of this project is to relieve congestion, improve safety and improve the flow of traffic. (Outcome Statements I, II and III)

Options:

E-5

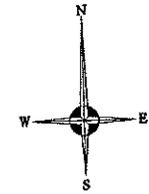
- City Management recommends that City Council approve the attached purchase agreement and accept the attached Permanent Public Utility Easement and Grading and Temporary Construction Permit from Comerica Bank so that the City can proceed with the acquisition of this right-of-way.

PAP\G\MEMOS TO MAYOR & CC\Comerica Bank Purchase Agreement, PUE & RGTC

RIGHT OF WAY ACQUISITION

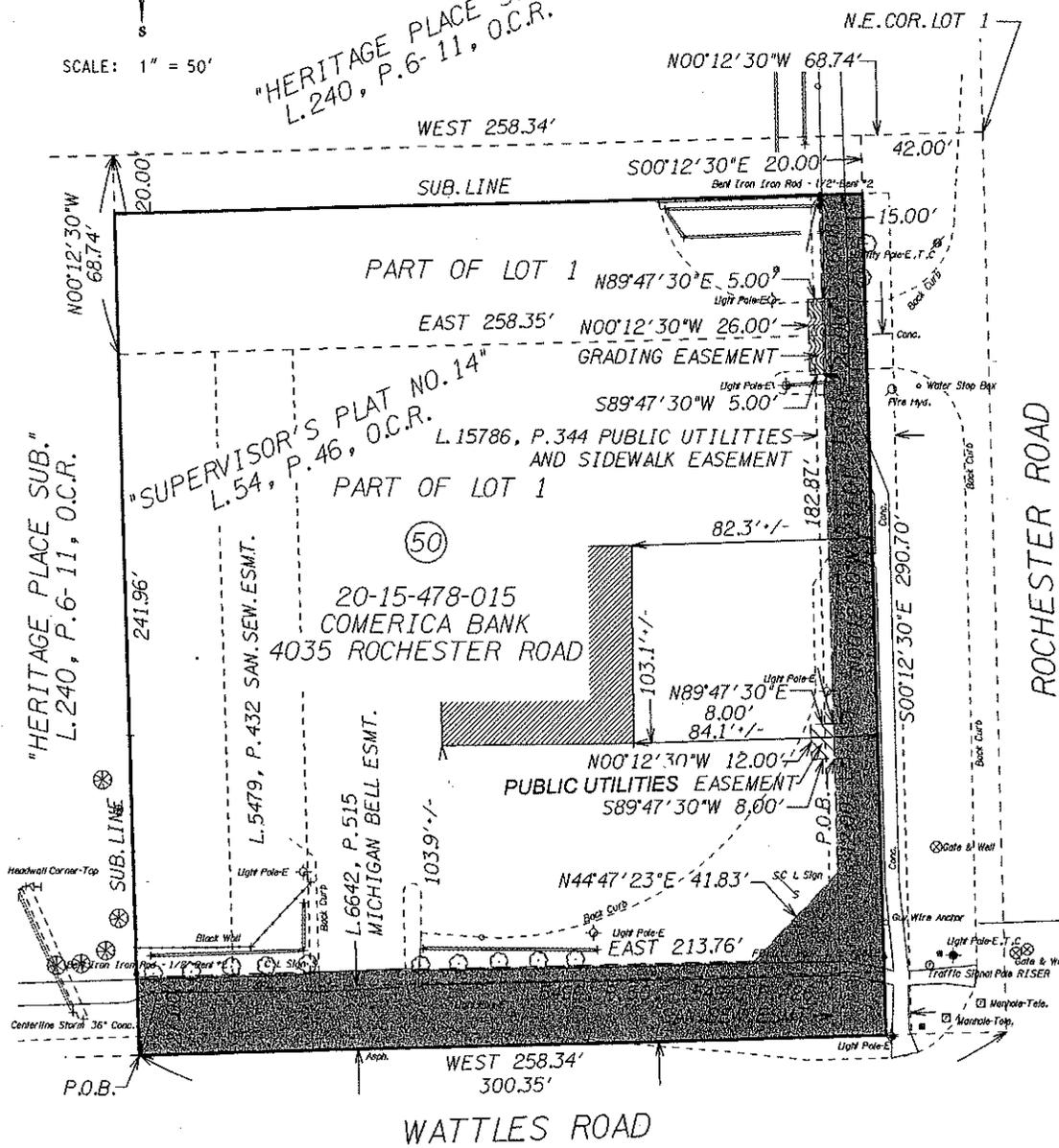
EXHIBIT 'B' PARCEL 50

NOTE: DESCRIPTION TAKEN FROM RECORD.



SCALE: 1" = 50'

"HERITAGE PLACE SUB."
L. 240, P. 6-11, O.C.R.



"HERITAGE PLACE SUB."
L. 240, P. 6-11, O.C.R.

"SUPERVISOR'S PLAT NO. 14"
L. 54, P. 46, O.C.R.

20-15-478-015
COMERICA BANK
4035 ROCHESTER ROAD

WATTLE ROAD

ROCHESTER ROAD

20-15-478-015
COMERICA BANK
TOTAL AREA - 75,099 S.F.
R.O.W. ACQUISITION - 11,370 S.F.
REMAINDER - 63,729 S.F.
PUBLIC UTILITIES EASEMENT - 96 S.F.
GRADING EASEMENT - 130 S.F.

- R.O.W. ACQUISITION -
- PUBLIC UTILITIES EASEMENT -
- GRADING EASEMENT -

USER NAME: dmpert
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REV. 01-03-08

JOB NO. 19990476	HUBBELL, ROTH & CLARK, INC. CONSULTING ENGINEERS 555 HULET DRIVE BLOOMFIELD HILLS, MICH.	SHEET NO. 2
DATE 11-29-07		OF 2

CITY OF TROY
AGREEMENT TO PURCHASE REALTY
FOR PUBLIC PURPOSES

The CITY OF TROY (the "Buyer"), agrees to purchase from Comerica Bank, a Texas banking association (the "Seller"), the following described premises (the "Property"):

SEE ATTACHED EXHIBIT "A"

for a public project within the City of Troy and to pay the sum of Three Hundred, Fifty-Six Thousand, Two Hundred and no/100 Dollars (\$356,200) under the following terms and conditions:

1. Intentionally deleted.
2. Seller shall pay all taxes, prorated to the date of closing, including all special assessments, now due or which may become a lien on the Property prior to the conveyance.
3. Seller shall deliver the Warranty Deed upon payment by Buyer to Seller of the purchase money (adjusted for proration of real estate taxes) by cashier's check or certified check drawn upon the account of the City of Troy. The Warranty Deed shall be subject to all matters of record (except for those removed under paragraph 6 below), taxes and assessments which are not on the closing date due and payable, and building, zoning and other laws affecting the Property.
4. Buyer shall, at its own expense, provide title insurance information and obtain title insurance if desired, and the Seller has disclosed on attached **Exhibit "B"** any encumbrances against the Property of which Seller has actual knowledge.
5. This Agreement is binding upon the parties and closing shall occur within ninety (90) days of the date of this Agreement, time being of the essence under this Agreement. .
6. Buyer shall notify the Seller immediately of any deficiencies encumbering marketable title, and Seller shall have thirty (30) days from the date it receives such notice to remove the deficiencies or, in the case of objections to liens in a specific amount, to notify Buyer that it agrees to have such liens removed at or before the closing. Seller is not obligated to remove or attempt to remove any such deficiencies. If the Seller fails to remove the deficiencies in marketable title to Buyer's approval within said 30 days and/or fails to agree to remove any liens in a specific amount that Buyer objected to, the Buyer, as its sole options, shall have the option of proceeding under the terms of this Agreement to take title in a deficient condition or to render the Agreement null and void, and any deposit tendered to the Seller shall be returned immediately to the Buyer upon demand. If Buyer fails to provide notice to Seller within ten (10) days after the end of said 30 day period as to which of these two options Buyer elects, it shall be deemed that Buyer elects to take title subject to such deficiencies.
7. Although the City of Troy will not withhold or place in escrow any portion of this sum, the City reserves its rights to bring Federal and/or State and/or local cost recovery actions against the present owners and any other potentially responsible parties, arising out of a release of hazardous substances at the Property.
8. Seller acknowledges that this offer to purchase is subject to final approval by Troy City Council. Unless Buyer notifies Seller within forty-five (45) days after the date of this Agreement that such final approval has not been obtained and that Seller is terminating the Agreement, then it shall be deemed that such final approval has been obtained and that this condition is satisfied and waived.
9. Intentionally deleted.
10. Additional conditions, if any:

(a) Except as specifically and expressly provided in this Agreement and in the documents executed at the closing, the Property is being conveyed to Buyer "AS-IS", "WHERE-IS", without representation or warranty of any kind, except for the reservation as stated in paragraph 7 of this Agreement.

(b) Buyer shall pay all recording fees and real estate transfer taxes.

(c) Each party represents to one another that neither has dealt with any broker or agent and that there are no side letters, contracts or agreements relating to, or entitling a broker or agent to share or participate in, brokerage fees, commissions, finder's fees or other similar charges in connection with this Agreement.

(d) Any notice required or desired to be given pursuant to this Agreement shall be in writing and shall be deemed duly given either (i) two (2) days after the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one (1) day after the date sent by overnight courier service (delivery charges paid by sender) or (iii) the date of sending by telecopier or facsimile, if evidenced by customary proof of receipt by the sender's telecopy or facsimile machine to the following address:

If to Seller: Comerica Bank
3501 Hamlin Road
Auburn Hills, MI 48326-2220
Attn: Michael C. Venetis, V.P.,
Director of National Marketing
Facsimile No.: 248-371-7102

with a copy to: Comerica Bank
500 Woodward Avenue
33rd Floor
Detroit, Michigan 48226-3391
Attn: Glen M. Zatz
Facsimile No.: 313-222-9480

If to Buyer: Pat Petitto, SR/WA, R/W-RAC
c/o City of Troy, Real Estate Department
500 West Big Beaver Road
Troy, MI 48084

Any party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such party.

(e) All understandings and agreements had between the parties with respect to the subject matter herein are merged into this Agreement which alone fully and completely expresses their agreement. In entering into this Agreement, each party is relying only on those representations made by the other party, if any, which are contained within this Agreement and is not relying on any other oral or written representations made by, or allegedly on behalf of, a party. This Agreement may be changed only in writing signed by both of the parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto and shall survive and not merge with the deed delivered to Buyer at closing.

(f) **Jury Waiver. EACH PARTY ACKNOWLEDGES THAT THE RIGHT TO A JURY TRIAL IS CONSTITUTIONAL, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THIS AGREEMENT.**

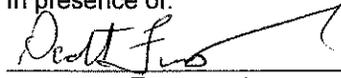
(g) Buyer represents to Seller that the road widening to Wattles Road and/or to Rochester Road that may occur as a result of the conveyance of the Property: (i) will not interfere with ingress and egress between Seller's property (adjacent to the Property) and Wattles Road and/or Rochester Road (other than on a temporary basis during certain times of construction activity, but access to and from Rochester and Wattles Road will always be available), (ii) will not cause Seller to have to relocate or modify its current curb-cuts on Seller's remaining

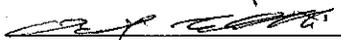
property (adjacent to the Property), (iii) will not cause Seller's current improvements on its remaining property (adjacent to the Property) to be in violation of any municipal statutes, ordinances, regulations or other laws or any site plan approvals or building permits (except that Seller will have to reconfigure its parking lot as shown on attached Exhibit "C", or as otherwise approved by the City of Troy, in order to meet City of Troy set-back requirements), and (iv) will not interfere with Seller's business operations on Seller's remaining property (adjacent to the Property).

SELLER HEREBY ACKNOWLEDGES THAT NO PROMISES WERE MADE EXCEPT AS CONTAINED IN THIS AGREEMENT.

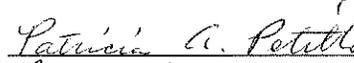
IN WITNESS WHEREOF, the undersigned hereunto affixed their signatures this 5TH day of MAY, 2009.

In presence of:


SCOTT FINLEY

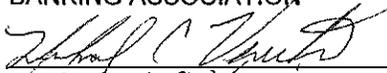

ANTONIO CICCHETTI

CITY OF TROY (BUYER)

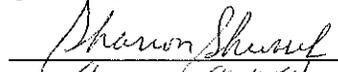

PATRICIA A. PETITTO

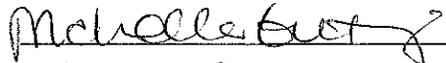
SELLERS:

COMERICA BANK, A TEXAS BANKING ASSOCIATION


MICHAEL C. VENETIS
VICE PRESIDENT - REAL ESTATE

In presence of:


SHARON SKURICH


MICHELLE GUTIERREZ

11-29-07
19990476
20-15-478-015
rev. 01-03-08

EXHIBIT 'A'

DESCRIPTION OF RIGHT OF WAY ACQUISITION

Part of Lot 1 of "Supervisor's Plat No. 14" a subdivision of part of the Southeast $\frac{1}{4}$ of Section 15, T2N, R11E, Troy Township (now the City of Troy), Oakland County, Michigan, as recorded in Liber 54 of Plats, Page 46, Oakland County Records, described as follows: Beginning at a point distant West 42.00 feet and S00°12'30"E 20.00 feet from the Northeast corner of said Lot 1; thence S00°12'30"E 290.70 feet; thence West 258.34 feet; thence N00°12'30"W 27.00 feet; thence East 213.76 feet; thence N44°47'23"E 41.83 feet; thence N00°12'30"W 234.01 feet; thence East 15.00 feet to the Point Of Beginning. Said acquisition contains 11,370 square feet, or 0.261 acres, more or less.

PERMANENT UTILITY EASEMENT

Sidwell #88-20-15-478-015
Parcel #50

Comerica Bank, a Texas banking association, Grantor, whose address is: 3501 Hamlin Road, Auburn Hills, Michigan 48326-2220 for and in consideration of the sum of: Five Hundred and no/100 Dollars (\$500) paid by the CITY OF TROY, a Michigan Municipal Corporation, Grantee, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 grants to the Grantee a utility easement, said easement for land situated in the City of Troy, Oakland County, Michigan described as:

SEE ATTACHED EXHIBIT "A"

and on a temporary basis to enter upon sufficient land adjacent to said improvement(s) for the purpose of the construction, operation, maintenance, repair and/or replacement thereof.

The premises so disturbed by the exercise of any of the foregoing powers shall be promptly and reasonably restored to its original condition by the Grantee at its expense.

Grantee agrees to provide written notice prior to commencement of project to Grantor, at the following address (or such other address as is provided in writing to Grantee), at least 3 business days prior to entering onto the easement area to commence any construction, maintenance, repair or replacement work, except that in the event of an emergency only such notice as is practical under the circumstances need be given:

Comerica Bank
3501 Hamlin Road
Auburn Hills, Michigan 48236-2220
Attn: Real Estate Facilities

Notice will be deemed given when personally delivered or two business days after postmarking when mailed by first class mail, postage prepared or the next business day following delivery to a nationally recognized overnight courier. This address may be changed by notice from Grantor to Grantee.

Grantee agrees that no exercise of rights under this instrument shall interfere with the ability of Grantor and its customers, employees and invitees to have ingress to and egress from Grantor's property (of which the easement is a part) or interfere with business operations on Grantor's property. The utility pipes and related equipment shall be located underground, except for any surface level utility poles, fire hydrants, manholes or grating covers.

Grantor may grant other easements over, across and under the easement area that do not interfere with Grantee's use of the easement area.

In the event that any construction or mechanic's liens are filed against Grantor's property in connection with any work performed by or on behalf of Grantee pursuant to this instrument, Grantee within 14 days after notice from Grantor, shall either pay or cause to be paid the same and have the liens discharged of record.

Grantee shall defend, indemnify and hold harmless Grantor, its parent, subsidiaries and affiliates, and their respective employees, agents, officers, directors and shareholders from and against all claims, damages and liabilities of whatever nature, including without limit court costs and reasonable attorneys fees, arising from or relating to (i) any act of Grantee or its licenses, agents, employees or contractors on or about the Easement or (ii) a default by Grantee under this instrument.

Before any work is commenced by or on behalf of Grantee pursuant to this instrument, it shall cause its contractor(s) and subcontractor(s) to procure and keep in effect, during the course of their work, the following insurance coverage or such other coverage and amounts as may be required under the public construction bid for the particular work being performed:

(a) Workers' Compensation insurance as required by the Michigan Labor Department and Michigan Worker's Disability Compensation Act (MCL 418.101, et. seq.)

(b) Commercial General Liability insurance, coverages for premises/operations, underground explosion, collapse hazard, completed operations, contractual liability and "broad form" property damage, in the amounts of Two Million Dollars per person and per occurrence.

(c) Commercial Automobile Liability insurance, including coverage for owned, non-owned and hired vehicles, in the amount of Two Million Dollars per occurrence.

With reference to the insurance policies specified in Sub-subparagraphs "(b)" and "(c)", claims-made policies are not acceptable. Grantor and its parent and affiliated companies shall be named as an additional insured on all policies of insurance specified above. Evidence of such insurance acceptable to Grantor shall be promptly sent to Grantor at the above address for notices. Said insurance policies shall contain a provision that coverage afforded shall not be modified, canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Grantor.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns and the covenants contained herein shall run with the land.

IN WITNESS WHEREOF, the undersigned hereunto affixed his signature(s) this 5th day of May, 2009.

COMERICA BANK, A TEXAS BANKING ASSOCIATION

Michael C. Venetis (L.S.)
* Michael C. Venetis
VICE PRESIDENT - REAL ESTATE
* (L.S.)

STATE OF MICHIGAN)
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this 5th day of May, 2009, by Michael C. Venetis, V.P. of R.E., of Comerica Bank, a Texas banking corporation.

Sharon P. Skubert
* Sharon P. Skubert
Notary Public, Macomb County, Michigan
Acting in Oakland County, Michigan
My Commission Expires August 14, 2008

Prepared by: Patricia A. Petitto
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Return to: City Clerk
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

PLEASE SIGN IN BLUE INK AND PRINT OR TYPE NAMES IN BLACK INK UNDER SIGNATURES

11-29-07
19990476
20-15-478-015
rev. 01-03-08

EXHIBIT 'A'

DESCRIPTION OF PUBLIC UTILITY EASEMENT

Part of Lot 1 of "Supervisor's Plat No. 14" a subdivision of part of the Southeast $\frac{1}{4}$ of Section 15, T2N, R11E, Troy Township (now the City of Troy), Oakland County, Michigan, as recorded in Liber 54 of Plats, Page 46, Oakland County Records, described as follows: Beginning at a point distant West 42.00 feet and S00°12'30"E 20.00 feet and West 15.00 feet and S00°12'30"E 182.87 feet from the Northeast corner of said Lot 1; thence S00°12'30"E 12.00 feet; thence S89°47'30"W 8.00 feet; thence N00°12'30"W 12.00 feet; thence N89°47'30"E 8.00 feet to the Point of Beginning.

Said easement contains 96 square feet, or 0.002 acres, more or less.

REGRAIDING AND TEMPORARY CONSTRUCTION PERMIT

Sidwell # 88-20-15-478-015
Project # 99.203.5
Parcel #50

Comerica Bank, a Texas banking association, Grantor(s), whose address is: 3501 Hamlin Road, Auburn Hills, Michigan 48326-2220, for and in consideration of the sum of Two Hundred and no/100 Dollars (\$200.00) paid by the CITY OF TROY, a Michigan Municipal Corporation, hereinafter called the CITY, whose address is 500 West Big Beaver Road, Troy, Michigan, hereby grants to the CITY, during the construction of and for a period of six (6) Months after completion of Rochester Road Improvements, Torpey to Barclay and Wattles Road Improvements, Bristol to Worthington, the right to move men, equipment, and materials on and through, and to store equipment, materials, and excavated matter on the following described property, located in the City of Troy, to-wit:

SEE ATTACHED EXHIBIT "A"

IN FURTHER CONSIDERATION, the premises so disturbed by reason of the exercise of any of the foregoing powers, shall be reasonably and promptly restored to its original condition by the City at its expense.

Grantee agrees to provide written notice prior to commencement of project to Grantor, at the following address (or such other address as is provided in writing to Grantee), at least 3 business days prior to entering onto the easement area to commence any construction, maintenance, repair or replacement work, except that in the event of an emergency only such notice as is practical under the circumstances need be given:

Comerica Bank
3501 Hamlin Road
Auburn Hills, Michigan 48236-2220
Attn: Real Estate Facilities

Notice will be deemed given when personally delivered or two business days after postmarking when mailed by first class mail, postage prepared or the next business day following delivery to a nationally recognized overnight courier. This address may be changed by notice from Grantor to Grantee.

Grantee agrees that no exercise of rights under this instrument shall interfere with the ability of Grantor and its customers, employees and invitees to have ingress to and egress from Grantor's property (of which the easement is a part) or interfere with business operations on Grantor's property. The utility pipes and related equipment shall be located underground, except for any surface level manholes or grating covers.

Grantor may grant other easements over, across and under the easement area that do not interfere with Grantee's use of the easement area.

In the event that any construction or mechanic's liens are filed against Grantor's property in connection with any work performed by or on behalf of Grantee pursuant to this instrument, Grantee within 14 days after notice from Grantor, shall either pay or cause to be paid the same and have the liens discharged of record.

Grantee shall defend, indemnify and hold harmless Grantor, its parent, subsidiaries and affiliates, and their respective employees, agents, officers, directors and shareholders from and against all claims, damages and liabilities of whatever nature, including without limit court costs and reasonable attorneys fees, arising from or relating to (i) any act of Grantee or its licenses, agents, employees or contractors on or about the Easement or (ii) a default by Grantee under this instrument.

Before any work is commenced by or on behalf of Grantee pursuant to this instrument, it shall cause its contractor(s) and subcontractor(s) to procure and keep in effect, during the course of their work, the following insurance coverage or such other coverage and amounts as may be required under the public construction bid for the particular work being performed:

(a) Workers' Compensation insurance as required by the Michigan Labor Department and Michigan Worker's Disability Compensation Act (MCL 418.101, et. seq.)

(b) Commercial General Liability insurance, coverages for premises/operations, underground explosion, collapse hazard, completed operations, contractual liability and "broad form" property damage, in the amounts of Two Million Dollars per person and per occurrence.

(c) Commercial Automobile Liability insurance, including coverages for owned, non-owned and hired vehicles, in the amount of Two Million Dollars per occurrence.

With reference to the insurance policies specified in Sub-subparagraphs "(b)" and "(c)", claims-made policies are not acceptable. Grantor and its parent and affiliated companies shall be named as an additional insured on all policies of insurance specified above. Evidence of such insurance acceptable to Grantor shall be promptly sent to Grantor at the above address for notices. Said insurance policies shall contain a provision that coverages afforded shall not be modified, canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Grantor.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representative, successors, and assigns and the covenants contained herein shall run with the land.

IN WITNESS WHEREOF, the undersigned hereunto affixed ^{his} ~~their~~ signature(s) this 5th day of MAY 2009.

COMERICA BANK

Michael C. Venetis (L.S.)
* Michael C. VENETIS
VICE PRESIDENT - REAL ESTATE (L.S.)
*

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 5th day of MAY 2009, by Michael C. Venetis, VP of Real Estate of Comerica Bank, a Texas Banking association.

Sharon P. Shwartz
Sharon P. Shwartz
Notary Public, Macomb, County, Michigan
Acting in Oakland County, Michigan

My Commission Expires August 14, 2013

Prepared by: Patricia A. Petitto
500 West Big Beaver
Troy, MI 48084

Return to: City Clerk, City of Troy
500 West Big Beaver Road
Troy, Michigan 48084

11-29-07
19990476
20-15-478-015
rev. 01-03-08

EXHIBIT 'A'

DESCRIPTION REGRADING AND TEMPORARY CONSTRUCTION PERMIT

Part of Lot 1 of "Supervisor's Plat No. 14" a subdivision of part of the Southeast $\frac{1}{4}$ of Section 15, T2N, R11E, Troy Township (now the City of Troy), Oakland County, Michigan, as recorded in Liber 54 of Plats, Page 46, Oakland County Records, described as follows: Beginning at a point distant West 42.00 feet and S00°12'30"E 20.00 feet and West 15.00 feet and S00°12'30"E 36.08 feet form the Northeast corner of said Lot 1; thence S00°12'30"E 26.00 feet; thence S89°47'30"W 5.00 feet; thence N00°12'30"W 26.00 feet; thence N89°47'30"E 5.00 feet to the Point Of Beginning.

Said easement contains 130 square feet, or 0.003 acres, more or less.