

CITY of NOVI CITY COUNCIL

**Agenda Item G
April 21, 2008**

SUBJECT Acceptance of a Landscape Maintenance Agreement for Alcan Automotive for property located at the southeast end of Magellan Drive in Beck West Corporate Park, south of Humboldt Drive and west of West Park Drive.

SUBMITTING DEPARTMENT: Community Development - Planning *Barb*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

On November 26, 2007 the petitioner, Amson Dembs Development, received Final Site Plan approval for a proposed industrial building on a 5.18 acre lot located at the south end of Magellan Drive in Beck West Corporate Park, south of Humboldt Drive and west of West Park Drive, SP# 07-30. The Planning Commission had previously approved the Preliminary Site Plan showing a 48,010 square foot industrial building. The applicant recently submitted the executed Landscape Maintenance Agreement in an effort to finalize this project. As indicated in the attached letter from the City Attorney's office, the Landscape Maintenance Agreement would normally be included with the Master Deed. However, since the Master Deed had already been prepared and was ready to be recorded with the County, a separate document to include the landscape maintenance provisions was drafted.

The Landscape Maintenance Agreement requires the applicant to maintain 80% opacity in the winter and 90% opacity in the summer of a non-access greenbelt and standard provisions requiring replacement of dead or dying landscape materials for two years.

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

RECOMMENDED ACTION: Acceptance of a Landscape Maintenance Agreement for Alcan Automotive for property located at the southeast end of Magellan Drive in Beck West Corporate Park, south of Humboldt Drive and west of West Park Drive.

	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				

LETTER FROM CITY ATTORNEY



March 19, 2008

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

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

Kristen Kapelanski, Planner
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375

**Re: Alcan Automotive (SP07-30)
Fourth Amendment to Consolidating Master Deed (Beck West
Corporate Park-Nov))
Our File No. 660135.NOVI**

Dear Ms. Kapelanski:

We have received and reviewed the proposed Landscape Maintenance Agreement that we recommended in our October 31, 2007 review report regarding the Fourth Amendment to Consolidating Master Deed for the Beck West Corporate Park – Novi Condominium. Because the Fourth Amendment has already been supported for recording with the County, instead of requesting a revision or further amendment, we recommended a separate agreement to accomplish requirements that would otherwise have been included in a Master Deed, including:

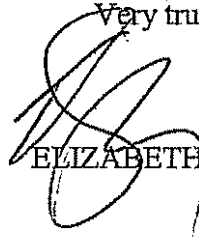
1. Permanent maintenance of a non-access greenbelt to 80% winter and 90% summer opacity standards.
2. Standard provisions requiring replacement of dead or dying landscape materials for 2-years.

We prepared the proposed Landscape Maintenance Agreement, a copy of which is attached, for signature by the property owner. It has been executed in the recommended format. All issues in our October 31, 2007 review report regarding the Fourth Amendment to Master Deed have now been addressed. The Landscape Maintenance Agreement may be placed on an upcoming City Council Agenda for approval. Once approved and executed by the City, it should be recorded with the Oakland County Register of Deeds.

Kristen Kapelanski, Planner
March 19, 2008
Page 2

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

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

C(w/enc.):

Maryanne Cornelius, Clerk

Barb McBeth, Deputy Community Development Director

David Beschke, Landscape Architect

John Freeland, ECT Environmental

Jeff Pitt, Amson Dembs

Thomas R. Schultz, Esquire

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**LANDSCAPE MAINTENANCE AGREEMENT
ALCAN AUTOMOTIVE**

LANDSCAPE
MAINTENANCE AGREEMENT

THIS EASEMENT AGREEMENT is made this 17th day of March, 2008, by and between Nadlan 28/29, LLC, a Michigan limited liability company, whose address is 26105 Lanny's Road, Novi, MI 48375 (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 4 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 an industrial development on the Property.
- B. The industrial development shall contain certain landscape improvements as set forth in the final approved site plan for the Development.
- C. The City of Novi Zoning Ordinance requires that the Owner meet certain minimum requirements regarding the maintenance and replacement of site landscaping.
- D. Additionally, the Zoning Ordinance requires that the Owner permanently maintain a greenbelt in the location shown on the approved landscape plan for the Development, which is on file with the City. The greenbelt must continue to meet the 90% summer, and 80% winter opacity requirements as set forth in the approved site plan.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve and maintain landscape and greenbelt areas shown on the approved site plan.

1. In accordance with the approved landscape plan for the development, all unhealthy and dead landscape material shall be replaced within one (1) year, or the next appropriate planting period, whichever occurs first; all landscaped areas shall be provided with an irrigation system; tree stakes, guy wires and tree wrap are to be removed after one winter season; plantings shall be guaranteed for two (2) growing seasons after date of the acceptance of the installation; if grass or weeds in the general common elements exceed the height specified in Chapter 21 of the Novi Code of Ordinances, or if shrubs are allowed to obstruct vision across any portion of the island and the responsible party is unwilling to rectify the problem, the

City will abate such violations and shall assess the cost of such abatement measures to the Owner.

2. Areas designated as Non-Access Greenbelt Areas as shown on the final approved site plan, shall not be developed in any manner which alters the trees, the vegetation and/or landscaping, including but not limited ground cover and screen planting such as earth berms, shrubs, coniferous and deciduous trees contained therein. Except for and subject to the activities which have been expressly authorized in the approved landscape plans for the Condominium Premises, there shall be no disturbance of the vegetation, including altering the topography of; placing fill material, removing or excavating any soil, minerals, or trees; constructing or placing any structures on; or otherwise altering and/or constructing, operating, maintaining any use or development. The Non-Access Greenbelt Areas shall be maintained by the Owner, meeting the 90% summer and 80% winter opacity requirements as set forth in the Zoning Ordinance.
3. 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 site landscaping and greenbelt in accordance with the requirements of the approved final site plan or any approved amendment thereto, 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 and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary 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 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.

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

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EXHIBIT A

LEGAL DESCRIPTIONS:

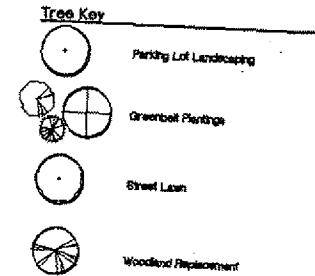
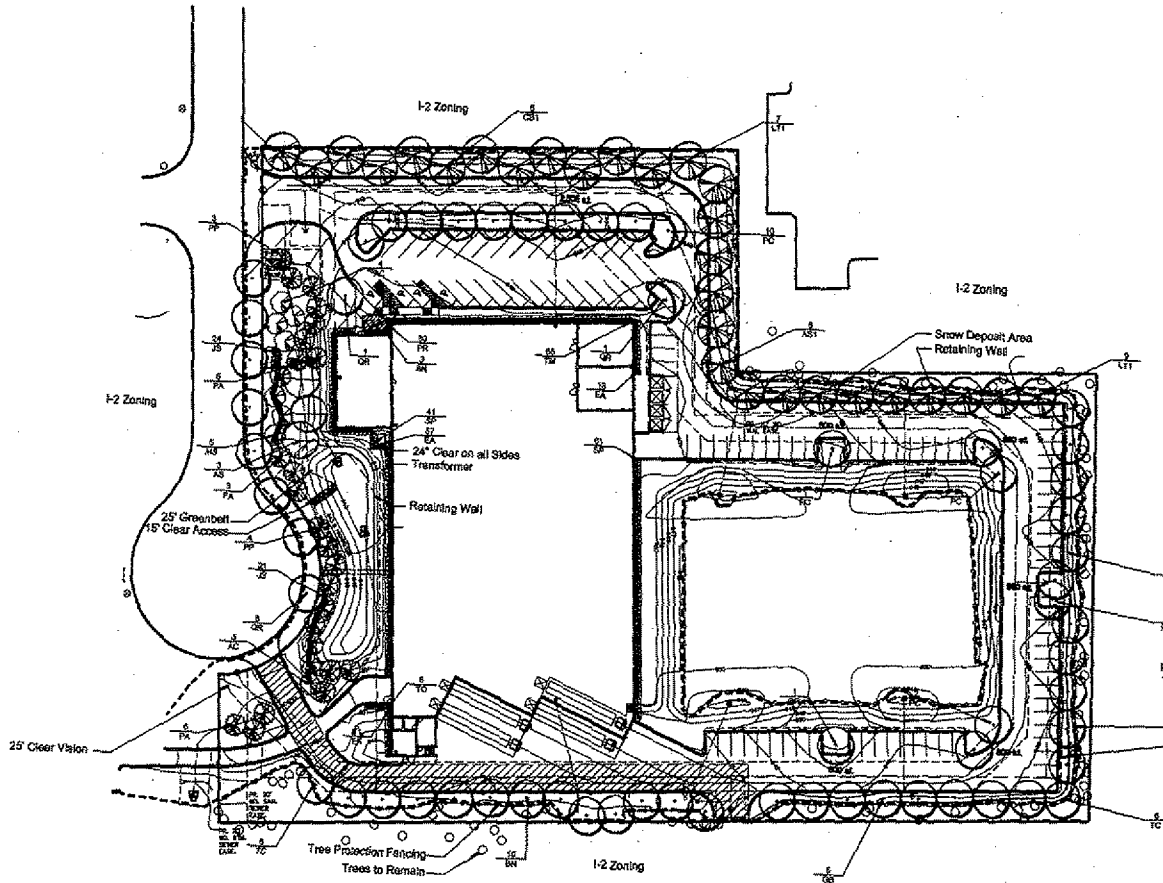
PARCEL NO. 22-09-326-008

UNIT 28, BECK WEST CORPORATE PARK-NOVI. A (SITE) CONDOMINIUM ACCORDING TO THE MASTER DEED THEREOF RECORDED IN LIBER 21427, PAGE 172 THROUGH 237, AND AS AMENDED BY FIRST AMENDMENT TO MASTER DEED RECORDED IN LIBER 21668, PAGE 715, OAKLAND COUNTY RECORDS AND FURTHER AMENDED BY SECOND AMENDMENT TO MASTER DEED RECORDED IN LIBER 26899, PAGE 883 AND DESIGNATED AS OAKLAND COUNTY CONDOMINIUM SUBDIVISION PLAN NO. 1265, TOGETHER WITH RIGHTS IN THE GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS AS SET FORTH IN SAID MASTER DEED AND AS DESCRIBED IN ACT 59 OF THE PUBLIC ACTS OF MICHIGAN OF 1978, AS AMENDED.

PARCEL NO. 22-09-326-007

UNIT 28, BECK WEST CORPORATE PARK-NOVI. A (SITE) CONDOMINIUM ACCORDING TO THE MASTER DEED THEREOF RECORDED IN LIBER 21427, PAGE 172 THROUGH 237, AND AS AMENDED BY FIRST AMENDMENT TO MASTER DEED RECORDED IN LIBER 21668, PAGE 715, OAKLAND COUNTY RECORDS AND FURTHER AMENDED BY SECOND AMENDMENT TO MASTER DEED RECORDED IN LIBER 26899, PAGE 883 AND DESIGNATED AS OAKLAND COUNTY CONDOMINIUM SUBDIVISION PLAN NO. 1265, TOGETHER WITH RIGHTS IN THE GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS AS SET FORTH IN SAID MASTER DEED AND AS DESCRIBED IN ACT 59 OF THE PUBLIC ACTS OF MICHIGAN OF 1978, AS AMENDED.

LANDSCAPE PLAN



Sea: _____



Title: Landscape Plan

Project: Alcan
Novi, Michigan

Prepared for: Arroyo Dental Development
26105 Lantry Road, Suite A
Novi, Michigan 48375

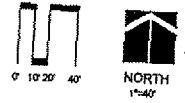
Revision:	Issued:
Preliminary Plan	May 11, 2007
Revised per City	June 25, 2007
Revised per City	August 10, 2007
Revised per City	August 28, 2007
Scoping Set	September 14, 2007

Note:
 Generally, all plantings should be located outside of utility easements. Trees located within a required utility easement must maintain a 5' horizontal separation away from any existing or proposed utility.

All Lawn Areas Shall be Sod
 Please See Sheet L-3 for Plant List

Job Number: 07002

Drawn By: js Checked By: js



Sheet No. _____