



CITY of NOVI CITY COUNCIL

Agenda Item M
July 11, 2011

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Marty Feldman Chevrolet, Inc. for the Marty Feldman-Kia Dealership development located at 42355 Grand River Avenue, in Section 23 (parcel 22-23-251-015).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *VB*

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

BACKGROUND INFORMATION:

Marty Feldman Chevrolet, Inc. requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the Marty Feldman-Kia Dealership site, located at 42355 Grand River Avenue (located in Section 23 of the City of Novi). The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's June 27, 2011 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Marty Feldman Chevrolet, Inc. for the Marty Feldman-Kia Dealership development located at 42355 Grand River Avenue, in Section 23 (parcel 22-23-251-015).

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

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

June 27, 2011

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

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

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

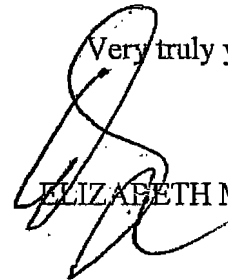
**Re: Marty Feldman Kia SP10-31
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660183.NOV1**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for the Mary Feldman Kia Property. The exhibits have been reviewed and approved by the City's consulting engineer. The Storm Drainage Facility Maintenance Easement Agreement is in order and may be placed on an upcoming City Council Agenda for approval. We will forward the original Agreement to the City Clerk upon our receipt. Once approved and executed by the City, the Agreement should be recorded with Oakland County Records by the City Clerk's Office.

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

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

C: Maryanne Cornelius, Clerk (w/ Enclosure)
Marina Neumaier, Assistant Finance Director (w/Enclosure)
Charles Boulard, Community Development Director (w/Enclosure)
Barb McBeth, Deputy Community Development Director (w/Enclosure)
Aaron Staup, Construction Engineering Coordinator (w/Enclosure)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)
Sheila Weber, Treasurer's Office (w/Enclosure)
Taylor Reynolds and Ted Meadows, Spalding DeDecker (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Suzanne S. Reynolds, Esquire (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 25 day of MAY, 2011, by and between Marty Feldman Chevrolet, Inc., a Delaware Corporation, whose address is 42355 Grand River Avenue, Novi, Michigan 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 expansion and construction of a auto dealership development on the Property (the "Development").

B. The _ 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.

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 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

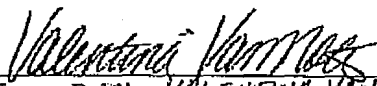
MARTY FELDMAN CHEVROLET, INC.,
a Delaware Corporation.

By:


JAY S. FELDMAN, CEO

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 25 day of MAY, 2011, by JAY S. FELDMAN the CEO of Marty Feldman Chevrolet, Inc., a Delaware Corporation, on its behalf.


VALENTINA VANNOTE
NOTARY PUBLIC, STATE OF MICHIGAN Notary Public VALENTINA VANNOTE
COUNTY OF LIVINGSTON OAKLAND County, Michigan
MY COMMISSION EXPIRES Apr 3, 2012
ACTING IN COUNTY OF OAKLAND My commission expires: 4/3/2013

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 _____ 2011, 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

PART OF THE EAST ½ OF THE NORTHWEST ¼ AND THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 23, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT NORTH 89 DEGREES 58 MINUTES 54 SECONDS WEST, 29.50 FEET ALONG THE EAST-WEST ¼ LINE OF SECTION 23 AND NORTH 00 DEGREES 17 MINUTES 15 SECONDS EAST, 999.47 FEET FROM THE CENTER OF SECTION 23; THENCE CONTINUING NORTH 00 DEGREES 17 MINUTES 15 SECONDS EAST, 582.93 FEET TO THE SOUTH LINE OF 100 FOOT WIDE GRAND RIVER AVENUE; THENCE ALONG THE SOUTH LINE, SOUTH 70 DEGREES 39 MINUTES 32 SECONDS EAST, 790.10 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 02 SECONDS WEST, 583.24 FEET; THENCE NORTH 70 DEGREES 39 MINUTES 32 SECONDS WEST, 791.04 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART WHICH LIES NORTHEASTERLY OF A LINE 10 FEET SOUTHWESTERLY OF, MEASURED AT RIGHT ANGLES AND PARALLEL TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF GRAND RIVER AVENUE, AS CONVEYED TO THE BOARD OF COUNTY ROAD COMMISSIONERS OF THE COUNTY OF OAKLAND, STATE OF MICHIGAN, A PUBLIC BODY CORPORATE, AS DISCLOSED BY INSTRUMENT RECORDED IN LIBBER 7949, PAGE 226, OAKLAND COUNTY RECORDS.

Tax Identification Number: 22-23—251-015

EXHIBIT B

MAINTENANCE TASKS AND SCHEDULE DURING CONSTRUCTION

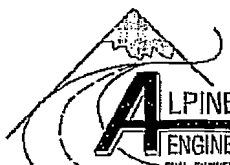
Tasks	Storm Sewer System	Catch Basin Sumps	Catch Basin Inlet Castings	Channels & Swales	Outflow Control Structures	Detention Basin	Schedule
Inspect for sediment accumulation	X	X	X	X	X	X	Weekly
Removal of sediment accumulation	X	X		X	X	X	As needed & prior to turnover
Inspect for floatables and debris		X	X	X	X	X	Quarterly
Cleaning of floatables and debris		X	X	X	X	X	Quarterly & at turnover
Inspection for erosion				X		X	Weekly
Re-establish permanent vegetation on eroded slopes				X		X	As needed & prior to turnover
Replacement of stone					X	X	As needed
Wet weather inspection of structural elements, (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer	X			X	X	X	As needed & at turnover
Make adjustments or replacements as determined by wet weather inspection	X			X	X	X	As needed
Street Sweeping							As needed

PERMANENT MAINTENANCE TASKS AND SCHEDULE

Tasks	Storm Sewer System	Catch Basin Sumps	Catch Basin Inlet Castings	Channels & Swales	Outflow Control Structures	Detention Basin	Schedule
Inspect for sediment accumulation	X	X	X	X	X	X	Annually
Removal of sediment accumulation	X	X		X	X	X	Every 2 years as needed
Inspect for floatables and debris		X	X	X	X	X	Annually
Cleaning of floatables and debris		X	X	X	X	X	Annually
Inspection for erosion				X		X	Annually
Re-establish permanent vegetation on eroded slopes				X		X	As needed
Replacement of stone							As needed
Wet weather inspection of structural elements, (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer	X			X	X	X	Annually
Make adjustments or replacements as determined by wet weather inspection	X			X	X	X	As needed

Annual inspection for sediment accumulation	\$100
Removal of sediment every 2 years as needed	\$500
Inspect for floatables and debris annually and as needed	\$100
Removal of floatables and debris annually and as needed	\$150
Inspect system for erosion annually and as needed	\$300
Re-establish permanent vegetation on eroded slopes as needed	\$350
Total annual budget	\$1,300

NOTE:
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.

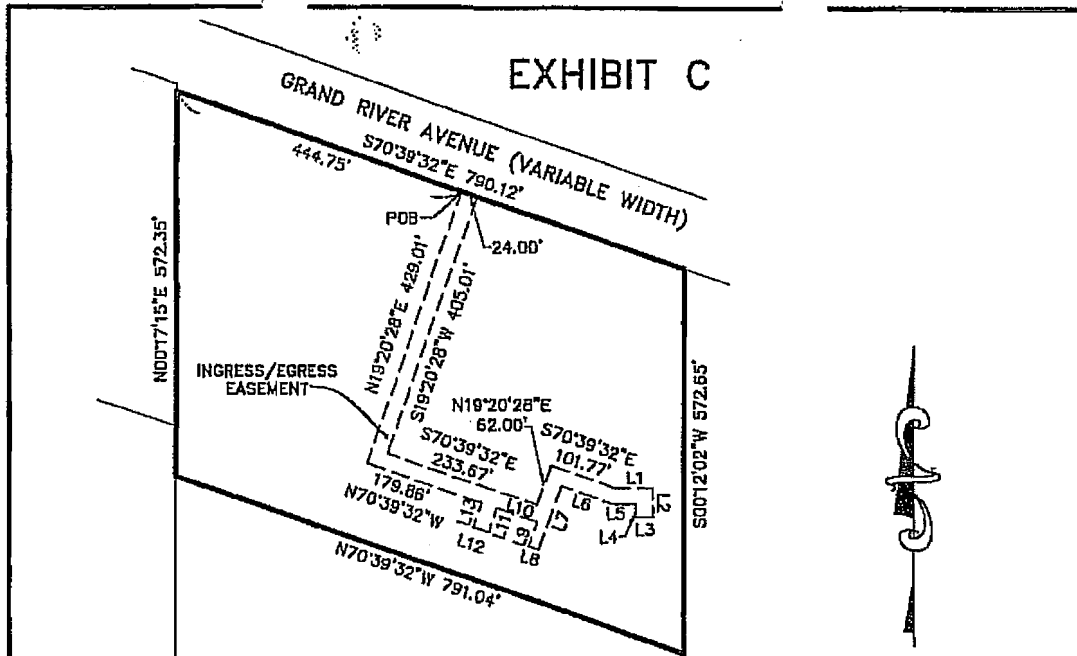


ALPINE ENGINEERING, INC.
CIVIL ENGINEERS & LAND SURVEYORS

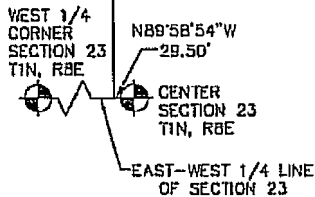
45692 WEST ROAD
SUITE 109
NOVI, MICHIGAN 48377
(248) 926-3701 (BUS)
(248) 926-3765 (FAX)

CLIENT: MARTY FELDMAN CHEVROLET	DATE: 10-11-10
STORM WATER MAINTENANCE EXHIBIT	DRAWN BY: TG
	CHECKED BY: TG
MARTY FELDMAN CHEVROLET	SCALE: HORIZ 1" = 100' FT. VERT 1" = 10' FT.
SECTION: 23 TOWNSHIP: 11N RANGE: 06E	1
CITY OF NOVI OAKLAND COUNTY MICHIGAN	08-172

EXHIBIT C



LINE	BEARING	LENGTH
L1	N89°47'05\"E	52.71'
L2	S00°12'55\"E	43.00'
L3	S89°47'05\"W	24.00'
L4	N00°12'55\"W	19.00'
L5	S89°47'05\"W	32.84'
L6	N70°39'32\"W	81.91'
L7	S19°20'28\"W	100.00'
L8	N70°39'32\"W	15.00'
L9	N19°20'28\"E	38.00'
L10	N70°39'32\"W	62.81'
L11	S19°20'28\"W	38.00'
L12	N70°39'32\"W	24.00'
L13	N19°20'28\"E	38.00'

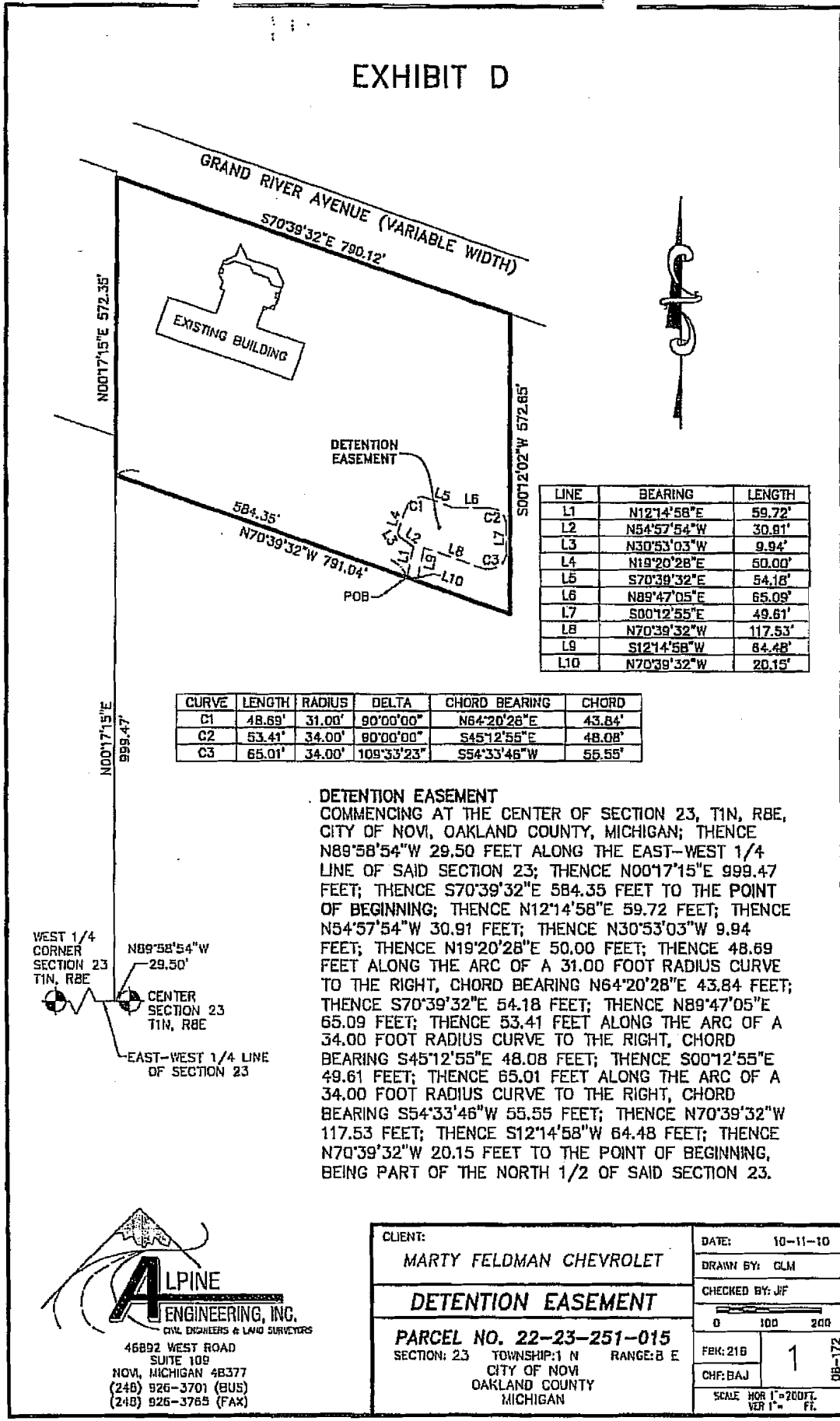


INGRESS AND EGRESS EASEMENT
 COMMENCING AT THE CENTER OF SECTION 23, T1N, R8E, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE N89°58'54\"W 29.50 FEET ALONG THE EAST-WEST 1/4 LINE OF SAID SECTION 23; THENCE N00°17'15\"E 999.47 FEET; THENCE CONTINUING N00°17'15\"E 572.35 FEET; THENCE S70°39'32\"E 444.75 FEET ALONG THE SOUTH LINE OF GRAND RIVER AVENUE (VARIABLE WIDTH) TO THE POINT OF BEGINNING; THENCE CONTINUING S70°39'32\"E 24.00 FEET ALONG SAID LINE; THENCE S19°20'28\"W 405.01 FEET; THENCE S70°39'32\"E 233.67 FEET; THENCE N19°20'28\"E 62.00 FEET; THENCE N70°39'32\"E 101.77 FEET; THENCE N89°47'05\"E 52.71 FEET; THENCE S00°12'55\"E 43.00 FEET; THENCE S89°47'05\"W 24.00 FEET; THENCE N00°12'55\"W 19.00 FEET; THENCE S89°47'05\"W 32.84 FEET; THENCE N70°39'32\"W 81.91 FEET; THENCE S19°20'28\"W 100.00 FEET; THENCE N70°39'32\"W 15.00 FEET; THENCE N19°20'28\"E 38.00 FEET; THENCE N70°39'32\"W 62.81 FEET; THENCE S19°20'28\"W 38.00 FEET; THENCE N70°39'32\"W 24.00 FEET; THENCE N19°20'28\"E 38.00 FEET; THENCE N70°39'32\"W 179.86 FEET; THENCE N19°20'28\"E 429.01 FEET TO THE POINT OF BEGINNING, BEING PART OF THE NORTH 1/2 OF SAID SECTION 23.

ALPINE
 ENGINEERING, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 46892 WEST ROAD
 SUITE 109
 NOVI, MICHIGAN 48377
 (248) 926-3701 (BUS)
 (248) 926-3765 (FAX)

CLIENT:	MARTY FELDMAN CHEVROLET	DATE:	10-11-10
		DRAWN BY:	GLM
INGRESS/EGRESS EASEMENT		CHECKED BY:	JIF
PARCEL NO. 22-23-251-015		0 100 200	
SECTION: 23 TOWNSHIP: 1 N RANGE: 8 E		FBIK 216	1
CITY OF NOVI		CHF:BAJ	06-172
OAKLAND COUNTY		SCALE HOR 1"=200 FT.	
MICHIGAN		VER 1"= FT.	

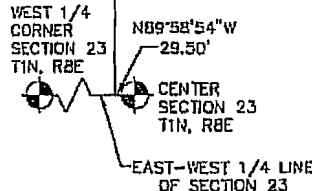
EXHIBIT D



LINE	BEARING	LENGTH
L1	N12°14'58"E	59.72'
L2	N54°57'54"W	30.91'
L3	N30°53'03"W	9.94'
L4	N19°20'28"E	50.00'
L5	S70°39'32"E	54.18'
L6	N89°47'05"E	65.09'
L7	S00°12'55"E	49.61'
L8	N70°39'32"W	117.53'
L9	S12°14'58"W	64.48'
L10	N70°39'32"W	20.15'

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	48.69'	31.00'	90°00'00"	N64°20'28"E	43.84'
C2	53.41'	34.00'	90°00'00"	S45°12'55"E	48.08'
C3	65.01'	34.00'	109°33'23"	S54°33'46"W	55.55'

DETENTION EASEMENT
 COMMENCING AT THE CENTER OF SECTION 23, T1N, R8E, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE N89°58'54"W 29.50 FEET ALONG THE EAST-WEST 1/4 LINE OF SAID SECTION 23; THENCE N00°17'15"E 999.47 FEET; THENCE S70°39'32"E 584.35 FEET TO THE POINT OF BEGINNING; THENCE N12°14'58"E 59.72 FEET; THENCE N54°57'54"W 30.91 FEET; THENCE N30°53'03"W 9.94 FEET; THENCE N19°20'28"E 50.00 FEET; THENCE 48.69 FEET ALONG THE ARC OF A 31.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N64°20'28"E 43.84 FEET; THENCE S70°39'32"E 54.18 FEET; THENCE N89°47'05"E 65.09 FEET; THENCE 53.41 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S45°12'55"E 48.08 FEET; THENCE S00°12'55"E 49.61 FEET; THENCE 65.01 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S54°33'46"W 55.55 FEET; THENCE N70°39'32"W 117.53 FEET; THENCE S12°14'58"W 64.48 FEET; THENCE N70°39'32"W 20.15 FEET TO THE POINT OF BEGINNING, BEING PART OF THE NORTH 1/2 OF SAID SECTION 23.



ALPINE ENGINEERING, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 46892 WEST ROAD
 SUITE 109
 NOVI, MICHIGAN 48377
 (248) 926-3701 (BUS)
 (248) 926-3765 (FAX)

CLIENT: MARTY FELDMAN CHEVROLET	DATE: 10-11-10
DETENTION EASEMENT	DRAWN BY: CLM
PARCEL NO. 22-23-251-015	CHECKED BY: JIF
SECTION: 23 TOWNSHIP: 1 N RANGE: 8 E	0 100 200
CITY OF NOVI	FRK: 218
OAKLAND COUNTY	CHF: BAJ
MICHIGAN	1
	SCALE HOR 1"=200 FT. VERT 1"=40 FT.

CONSENT TO EASEMENT

As the holder of a mortgage interest in and to the property referenced in the foregoing Storm Drainage Facility Maintenance Easement Agreement dated May 25, 2011, to which this consent is attached whereby Feldman Chevrolet, Inc. grants and conveys said easement to the City of Novi, the undersigned hereby evidences its consent to the grant, conveyance, existence and recordation of said easement, which easement is hereby acknowledged and agreed to be superior to the interest of the undersigned and shall bind the undersigned and the heirs, successors and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned has caused its signature to be placed on the 22ND day of June, 2011.

ALLY BANK a Utah corporation
Anthony C. Zimmer
By: Anthony C. Zimmer
(print name)
Its: Assistant Secretary

STATE OF Utah)
COUNTY OF Salt Lake)ss

The foregoing Consent to Easement was acknowledged before me this 22ND day of June, 2011 by Anthony C. Zimmer, the Assistant of Ally Bank, a Utah corporation, on behalf of the corporation.

Wendy F. Mills
Wendy F. Mills
(print name)
Notary Public, Utah County, Salt Lake
My commission expires: 3-19-2012
Acting in Salt Lake County

