



CITY of NOVI CITY COUNCIL

**Agenda Item D
October 20, 2014**

SUBJECT: Approval of a variance from Section 26.5-10, requiring a Maintenance and Guarantee Bond from LTF Real Estate Company, Inc. for the water main improvements for Lifetime Fitness, located at 40000 High Pointe Blvd (parcel 22-36-200-034).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division ^{A-24} ₃₁₆

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The property owner for Lifetime Fitness, LTF Real Estate Company, Inc., seeks a variance from Section 26.5-10 of the Novi Code of Ordinances regarding maintenance and defect guarantees, as presented in the attached undated letter. The applicant is preparing to request acceptance of utilities for the site. The acceptance of utilities is an administrative process; however a variance from the ordinance requires City Council action.

The water main for this site was constructed, tested and placed in service more than 10 years ago; while the intended warranty period under the ordinance is two years. For this reason, the property owner is requesting a variance of the ordinance to waive the required Maintenance and Guarantee Bond in this case.

Staff recommends approval of the variance because of the amount of time since the infrastructure was placed in service exceeds the required warranty period and the City has not experienced any problems associated with the water main during the past 10 years. The City Attorney has reviewed the variance request and finds no legal impediment to granting the variance.

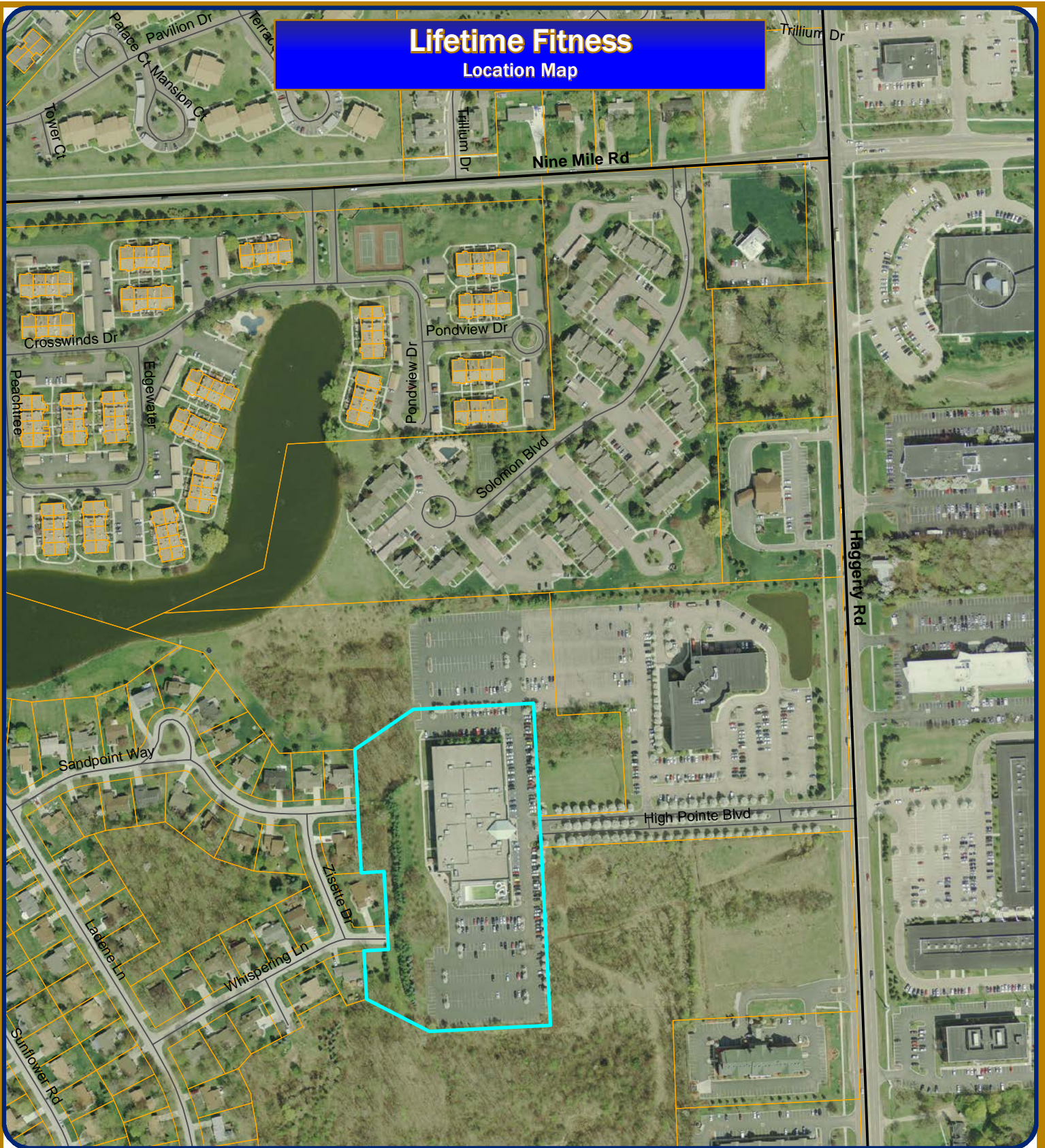
RECOMMENDED ACTION: Approval of a variance from Section 26.5-10, requiring a Maintenance and Guarantee Bond from LTF Real Estate Company, Inc. for the water main improvements for Lifetime Fitness, located at 40000 High Pointe Blvd (parcel 22-36-200-034).

| | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Mayor Gatt | | | | |
| Mayor Pro Tem Staudt | | | | |
| Council Member Casey | | | | |
| Council Member Fischer | | | | |

| | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Council Member Markham | | | | |
| Council Member Mutch | | | | |
| Council Member Wrobel | | | | |

Lifetime Fitness

Location Map

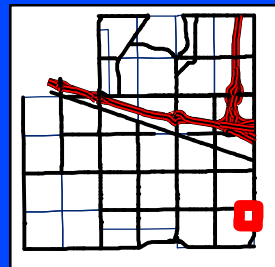


Map Author: Brian Coburn
 Date: 10/13/14
 Project:
 Version #:

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 65 130 260 390

1 inch = 326 feet



City of Novi
Department of Public Services
Field Services Complex
Mr. Brian Coburn – Engineering
26300 Lee BeGole Drive
Novi, MI 48375

Re: Request for waiver of maintenance requirement
Project: Water main @ Life Time Fitness property
Water main dedication deposit: \$4,000
Site Plan #: SP98-19

Dear Mr. Coburn,

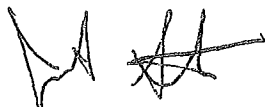
In October 1999, Life Time Fitness placed a water main dedication deposit with the City of Novi, MI in the name of FCA Construction Holdings LLC in the amount of \$4,000. As is stated, this deposit was to ensure the dedication of the water main and the filing of all required paperwork that accompanied the same.

The water main project has long-since been completed and the submission of the required paperwork is being addressed. At this time, we respectfully request a waiver of need for the Maintenance and Guarantee bonds due to the age of the water main. Upon the submittal and acceptance of all required paperwork needed to release the \$4,000 water main dedication deposit, it is requested that the refund be directed to the current mailing address for Life Time Fitness corporate office as is listed below.

REFUND ADDRESS

Life Time Fitness
Attn: Mr. Chris Lacher
2902 Corporate Place
Chanhassen, MN 55317

Sincerely;



Mr. Justin Schmidt
Life Time Fitness

Sec. 26.5-10. - Maintenance and defect guarantees authorized.

- (a) The department shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.
- (b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in article II of this chapter. With regard to plantings required under chapter 37 () of this Code or appendix A (zoning ordinance), the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the building official may require the guarantee with respect to such repair or replacement, as defined and determined by the department, to be extended for two (2) full years from the date of the repair or replacement.
- (c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

(Ord. No. 08-173.03, Pt. I, 3-17-08)



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.johnsonrosati.com

October 13, 2014

Rob Hayes, Public Services Director
CITY OF NOVI
Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: Lifetime Fitness
Utilities - Review for Acceptance

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the following documents for the Lifetime Fitness Property:

1. Water System Easement
2. Bill of Sale
3. Request for Maintenance and Guarantee Bond Waiver
4. Title Insurance Policy

We have the following comments relating to the above-named documents:

Water System Easement

LTF Real Estate Company, Inc., seeks to convey the water and sewer system facilities serving the Lifetime Fitness Property. We have reviewed and approve the format and language of the above Water System Easement and corresponding Bill of Sale.

We note that though the Title Insurance Policy provided was issued in 1998 and is no longer consistent with current title because it appears that the property has been transferred to various related corporate entities, the last deed of record as shown by the Oakland County Register of Deeds, is consistent with the Water System Easement and Bill of Sale.

The property owner has requested a waiver of the Maintenance and Guarantee Bond based on the age of the water system facilities. Section 1-12 of the City of Novi Code provides for City

Council to consider a waiver of ordinance requirements provided that the applicant can show all of the following:

Sec. 1-12. - General appeal.

(c) A variance may be granted by the city council from regulatory provisions of this Code when all of the following conditions are satisfied:

(1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;

(2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and

(3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

The basis of the request is that the utilities have been functioning properly without any defects for many years so that the bond would be an unnecessary expense for the applicant. Based on the standards above, it appears that the bond would be unnecessary to guarantee that the facilities are functioning properly, therefore the intent of the ordinance has been met and the public health, safety and welfare is not compromised.


Subject to (1) to approval of the legal descriptions for the easements by the City's Engineering Division; and (3) the grant of a waiver pursuant to Section 1-12 of the City of Novi Code (or alternatively posting of a Maintenance and Guarantee if the waiver is not approved) the Water System Easement may be accepted by Affidavit of the City Engineer.

Upon acceptance by Affidavit of the City Engineer the Water System Easement should be recorded with the Oakland County Register of Deeds. The Bill of Sale and Title Insurance remain in the City's file.

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

Very truly yours,

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



ELIZABETH KUDLA SAARELA

Rob Hayes, Public Services Director
October 13, 2014
Page 3

EMK

Enclosures

C: Maryanne Cornelius, Clerk (w/ Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, Deputy Community Development Director (w/Enclosures)
Sheila Weber, Treasurer's Office (w/Enclosures)
Kristin Pace, Treasurer's Office (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Adam Wayne, Construction Engineer (w/Enclosures)
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
David Beschke, Landscape Architect (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

WATER SYSTEM EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that LTF Real Estate Company, Inc., a Minnesota corporation, whose address is 2902 Corporate Place, Chanhassen, MN, 55317 (hereinafter referred to as "Grantor"), being title holder to the following described parcel of land, to-wit:

[See attached and incorporated Exhibit A]

Tax Identification Number: 20-3369902

for and in consideration of One (\$1.00) Dollar, receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile, Novi, Michigan 48375, (hereinafter referred to as "Grantee"), a non-exclusive perpetual easement for a water main, over, upon, across, in, through, and under the following described real property, to-wit:

[See attached and incorporated Exhibit B]

And to enter upon sufficient land adjacent to said water main easement for the purpose of exercising the rights and privileges granted herein.

Grantee may install, repair, replace, improve, modify and maintain water main lines and all necessary appurtenances thereto, within the easement herein granted.

All portions of the Property damaged or disturbed by Grantee's exercise of easement rights, shall be reasonably restored by Grantee to the condition that existed prior to the damage or disturbance.

Grantor agrees not to build or to convey to others permission to build any permanent structures on, over, across, in, through, or under the above-described easement, except that, subject to Grantee's approval as part of an approved site plan, the Grantor may construct and/or install surface improvements to the property, including paved driveways, parking and/or walkways; landscaping; utilities and/or similar improvements, which improvements do not interfere with use, operation, maintenance, repair and replacement of the water main in the easement areas shown on the attached and incorporated Exhibit B.

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

IN WITNESS WHEREOF, the undersigned Grantor has affixed his signature this ____ day of September, 2014.

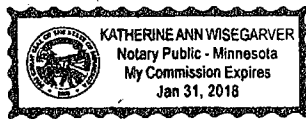
GRANTOR:

LTF REAL ESTATE COMPANY, INC.

By: Jeffery E. Melby
Jeff Melby
Its: Vice President, Development

STATE OF MINNESOTA)
 Hennepin) ss.
COUNTY OF CARVER)

On this 30th day of September, 2014, before me, personally appeared the above named Jeff Melby, the Vice President, Development of LTF Real Estate Company, Inc., to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as his free act and deed.



Katherine Wisegarver
Notary Public, *Hennepin*
Acting in *Carver* County, MN
My commission expires:

THIS INSTRUMENT DRAFTED BY:

Elizabeth M. Kudla, Esquire
JOHNSON ROSATI SCHULTZ & JOPPICH, P.C.
34405 W. Twelve Mile Road, Suite 200
Farmington Hills, Michigan 48331-5627

AND WHEN RECORDED RETURN TO:

Maryanne Cornelius, Clerk
City of Novi
45175 W. Ten Mile Rd.
Novi, MI 48375

Exhibit A

PARCEL DESCRIPTION

LEGAL DESCRIPTION - LIFE TIME FITNESS PARCEL

PER AYRES, LEWIS, NORRIS & MAY, INC. BOUNDARY SURVEY DATED 08-11-98
NFE HAS NOT PERFORMED A BOUNDARY SURVEY TO CONFIRM THIS LEGAL DESCRIPTION.

A PART OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 36; THENCE N01°38'53"W, 1599.72 FEET ALONG THE EAST LINE OF SAID SECTION 36 AND THE CENTERLINE OF HAGGERTY ROAD; THENCE S87°35'02"W, 793.50 FEET; THENCE S02°24'58"E, 273.50 FEET TO THE POINT OF BEGINNING (P.O.B.); THENCE CONTINUING ALONG SAID LINE S02°24'58"E, 803.12 FEET; THENCE S87°35'02"W, 302.76 FEET; THENCE N61°52'04"W, 175.78 FEET TO A POINT ON THE EASTERLY LINE OF WHISPERING MEADOWS SUBDIVISION NO. 3, AS RECORDED IN LIBER 163 OF PLATS, ON PAGES 25 AND 26, OAKLAND COUNTY RECORDS; THENCE THE FOLLOWING SEVEN (7) BEARINGS AND DISTANCES ALONG THE SAID EASTERLY LINE OF WHISPERING MEADOWS SUBDIVISION NO. 3:

- 1) THENCE N02°32'33"W, 120.00 FEET;
- 2) THENCE N87°27'27"E, 60.81 FEET;
- 3) THENCE N02°32'33"W, 194.43 FEET;
- 4) THENCE S87°35'02"W, 57.18 FEET;
- 5) THENCE N02°24'58"W, 127.50 FEET;
- 6) THENCE N01°50'57"W, 60.00 FEET;
- 7) THENCE N02°24'58"W, 120.00 FEET;

THENCE N56°08'50"E, 175.85 FEET; THENCE N87°35'02"E, 300.57 FEET TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS 40000 HIGH POINTE BOULEVARD, NOVI, MICHIGAN
PART OF TAX ITEM NO. 22-36-200-034.

Exhibit B

WATER MAIN EASEMENT DESCRIPTION

LEGAL DESCRIPTION - WATER MAIN EASEMENT

A 20 FOOT WIDE WATER SUPPLY EASEMENT TO BE CENTERED ALONG THE WATER SUPPLY LINE AS CONSTRUCTED, SAID CENTERLINE OF EASEMENT BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT EAST 1/4 CORNER OF SECTION 36, THENCE N01°38'53"W, 1599.72 FEET ALONG THE EAST LINE OF SAID SECTION 36 AND THE CENTERLINE OF HAGGERTY ROAD; THENCE S87°35'02"W, 793.50 FEET, THENCE S02°24'58"E, 273.50 FEET TO THE POINT OF BEGINNING FOR THE PARENT PARCEL; THENCE S87°35'02"W, 25.39 FEET AND S02°24'58"E, 16.74 FEET TO THE CENTERLINE OF THE EASEMENT, POINT OF BEGINNING "A"; THENCE S37°18'43"W, 25.16 FEET; THENCE S02°56'51"E, 200.65 FEET; THENCE S01°52'07"E, 40.17 FEET TO POINT "B"; THENCE S89°54'01"E, 20.34 FEET TO POINT OF ENDING "C"; THENCE CONTINUING FROM POINT "B" S01°52'07"E, 20.85 FEET TO POINT "D"; THENCE N88°09'49"E, 40.20 FEET TO POINT OF ENDING "E"; THENCE CONTINUING FROM POINT "D" S01°52'07"E, 202.35 FEET TO POINT "F"; THENCE N88°07'53"E, 21.16 FEET TO POINT OF ENDING "G"; THENCE CONTINUING FROM POINT "F" S01°52'07"E, 13.58 FEET TO POINT "H", THENCE N87°54'12"E, 8.93 FEET; THENCE S47°34'37"E, 47.01 FEET TO POINT OF ENDING "I"; THENCE CONTINUING FROM POINT "H" S87°54'12"W, 177.55 FEET TO POINT "J"; THENCE N02°05'48"W, 17.71 FEET TO POINT OF ENDING "K"; THENCE CONTINUING FROM POINT "J" S87°54'12"W, 14.44 FEET TO POINT "L"; THENCE S87°54'12"W, 122.00 FEET; THENCE S41°38'44"W, 45.95 FEET; THENCE S87°54'12"W, 5.50 FEET TO POINT OF ENDING "M"; THENCE CONTINUING FROM POINT "L" N02°05'48"W, 58.00 FEET; THENCE N47°54'12"W, 82.35 FEET; THENCE N02°05'48"W, 356.00 FEET TO POINT "N"; THENCE N02°05'48"W, 28.32 FEET TO POINT OF ENDING "O"; THENCE CONTINUING FROM POINT "N" N87°54'12"E, 249.26 FEET TO POINT OF ENDING "P".

SAID EASEMENT CONTAINS 35,287 SQUARE FEET, OR 0.81 ACRES.



ENGINEERS

NOWAK & FRAUS ENGINEERS

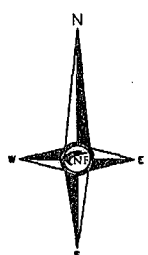
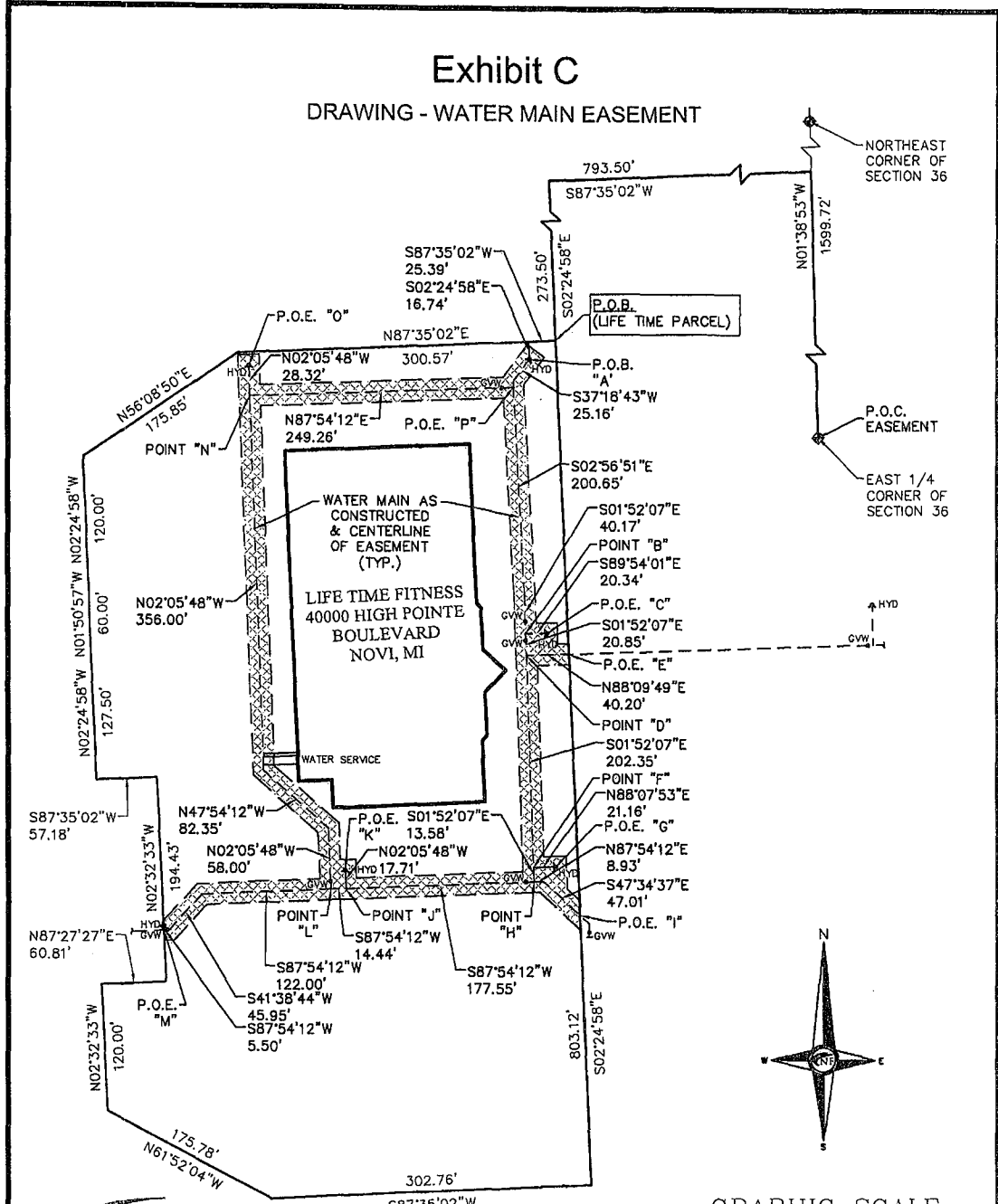
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX. (248) 332-8257

PREPARED FOR:
LTF REAL ESTATE CO.
2902 CORPORATE PLACE
CHANHASSEN, MN

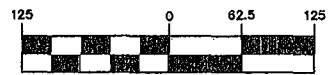
| | | | | |
|-------|----------|-------|---------|--------|
| SCALE | DATE | DRAWN | JOB NO. | SHEET |
| NONE | 07-23-14 | PT | 1145 | 1 of 2 |

Exhibit C

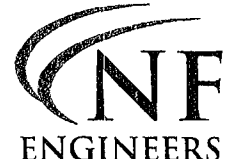
DRAWING - WATER MAIN EASEMENT



GRAPHIC SCALE



(IN FEET)
1 inch = 125 ft.



ENGINEERS
NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257

PREPARED FOR:
LTF REAL ESTATE CO.
2902 CORPORATE PLACE
CHANHASSEN, MN

| SCALE | DATE | DRAWN | JOB NO. | SHEET |
|---------|----------|-------|---------|--------|
| 1"=125' | 07-23-14 | PT | I145 | 2 of 2 |

