

**AGREEMENT FOR MAINTENANCE OF  
STORM WATER DETENTION SYSTEM**

THIS AGREEMENT FOR MAINTENANCE OF STORM WATER DETENTION SYSTEM ("Agreement") is made on \_\_\_\_\_, 2005, by FIFTH THIRD BANK, a Michigan banking corporation ("Fifth Third"), whose address is 38 Fountain Square Plaza, 10 MD ATA 1, Cincinnati, Ohio 45263; and the CITY OF ROCHESTER HILLS (the "City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

**RECITALS:**

**WHEREAS**, Fifth Third Bank owns and occupies the property described in attached Exhibit A ("Fifth Third Parcel"); and

**WHEREAS**, Fifth Third Bank submitted plans for, and the City has approved, a storm water drainage and detention system located on the Fifth Third Parcel (the "System"), which includes a detention basin; and

**WHEREAS**, the parties will benefit from the proper use and maintenance of the System and desire to enter into this Agreement to provide for the same.

**THEREFORE**, the parties agree:

1. **Use of the System:** Components of the System, including the detention basin, shall be used solely for the purpose of detaining storm and surface water on the property until such time as: (i) the City may determine and advise Fifth Third, or Fifth Third's successors, grantees or assigns, in writing that it is no longer necessary to use the detention basin to detain storm or surface water; and (ii) an adequate alternative for draining storm and surface water has been provided which is acceptable to the City and which includes the granting of such easements to the City or third parties for the alternative drainage system as may be necessary.

2. **Maintenance:**

A. Fifth Third shall be responsible for the proper maintenance, repair and replacement of the System and any part thereof, including the detention basin.

B. Proper maintenance of the System shall include, but not limited to: (i) keeping the bottom of the detention basin free from silt and debris; (ii) removing harmful algae; (iii) maintaining steel grating across the basin's inlets; (iv) controlling the effects of erosion; and (v) any other maintenance that is reasonable and necessary in order to facilitate or accomplish the intended function and purpose of the System.

3. **Action by City:** In the event Fifth Third or Fifth Third's successors, grantees, or assigns, neglects or fails at any time to properly maintain the System or any part thereof, the City may notify Fifth Third or Fifth Third's successors, grantees or assigns, in writing, and the notice shall include a listing and description of maintenance deficiencies and a demand that they must be corrected within thirty (30) days. The notice shall further specify the date and place for a hearing to be held at least fourteen (14) days after the date of the notice before the City Council, or such other board or official to whom the City Council may delegate responsibility. At the hearing, the City Council (or other board or official) may endorse or modify the listing and description of deficiencies to be corrected and, for good cause, may extend the time within which the deficiencies must be corrected.

Thereafter, if the maintenance deficiencies are not corrected within the time allowed, the City may undertake and make the necessary corrections, and may maintain the System for a period not to exceed one (1) year. Such maintenance of the System by the City shall not be deemed a taking of the property, nor shall the City's actions be deemed to vest in the public any right to use the property. If the City determines maintenance of the system by the City should continue beyond one year, the City shall hold, and provide advance written notice of, a further hearing at which Fifth Third or Fifth Third's successors, grantees or assigns, will not or cannot properly maintain the System, the City may continue to maintain the System for another year, and subject to a similar hearing and determination, in subsequent years.

In the event the City determines an emergency condition caused by or relating to the System threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the property and undertake appropriate corrective action.

4. **Charges:** The City shall charge to the current owner of the property the cost of maintenance or other corrective action undertaken by the City in accordance with this agreement, plus a ten percent (10%) administrative fee. If not timely paid, the City may assess the charges on the City's tax roll, which charges shall be a lien on the real property and shall be collectable and enforceable in the same manner general property taxes are collected and enforced.

5. **Notice:** Any notices required under this agreement shall be sent by certified mail to the address for each party set forth below, or to such other addresses as such party may notify the other parties in writing:

To Fifth Third: Fifth Third Bank  
Fifth Third Center  
c/o Property Management Department  
MD 10ATA1  
Cincinnati, Ohio 45263

With a copy to: Joseph W. Lash, Esq.  
Seyburn, Kahn, Ginn, Bess and Serlin, P.C.  
2000 Town Center, Suite 1500  
Southfield, Michigan 48075

To the City: Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

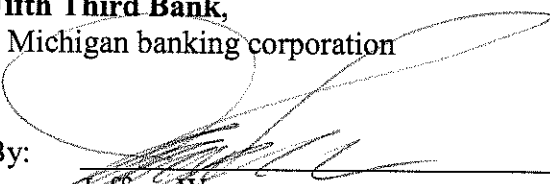
6. **Successors and Assigns:** This Agreement shall bind and inure to the benefit of the parties and their respective successors, grantees and assigns. The rights, obligations and responsibilities hereunder shall run with the land and shall bind all current and future owners of the property.

7. **Recording of Agreement:** This Agreement shall be recorded at the Oakland County Register of Deeds.

(Signatures on Following Page)

OK per  
J. S. [unclear]  
12-5-05

**Fifth Third Bank,**  
a Michigan banking corporation

By:   
Its: Jeffrey Wagner  
Vice President

**City of Rochester Hills**


By: \_\_\_\_\_  
Pat Somerville, Mayor

By: \_\_\_\_\_  
Jane Leslie, Clerk

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF OAKLAND    )

This Agreement was acknowledged before me on November 14, 2005, by Jeffrey Wagner, Vice President of Fifth Third Bank, a Michigan banking corporation on behalf of the corporation.

**BRADLEY M. NEWMAN**  
Notary Public, Oakland County, MI  
My Commission Expires Apr. 27, 2007

  
Notary Public Bradley M. Newman  
Acting in Oakland County  
My commission expires: 04/27/2007

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF OAKLAND    )

This Agreement was acknowledged before me on \_\_\_\_\_, 2005, by Pat Somerville, Mayor, and Beverly A. Jasinski, Clerk, of the City of Rochester Hills, on behalf of the City.

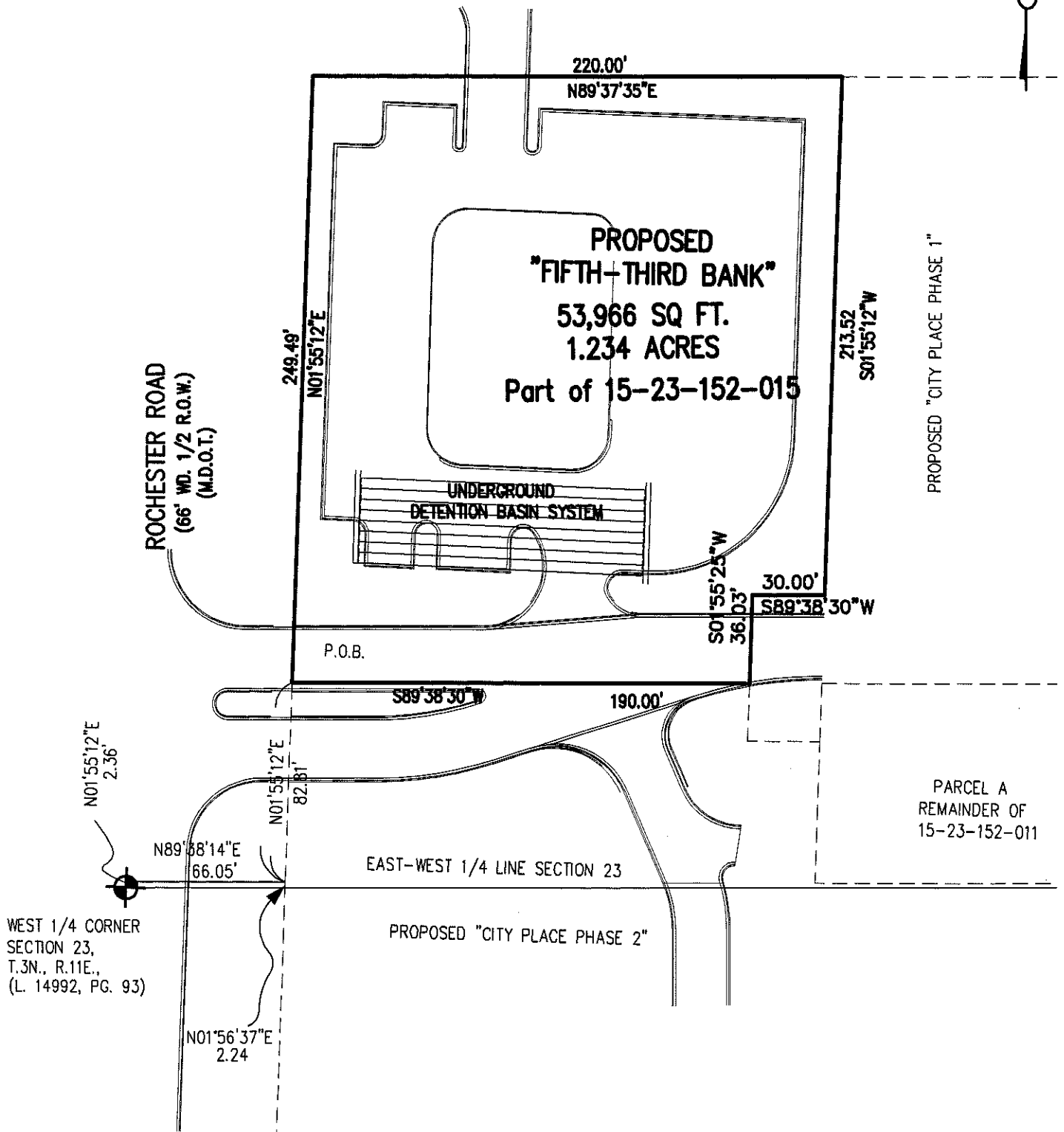
\_\_\_\_\_  
Notary Public  
Acting in \_\_\_\_\_ County  
My commission expires: \_\_\_\_\_

Drafted By:

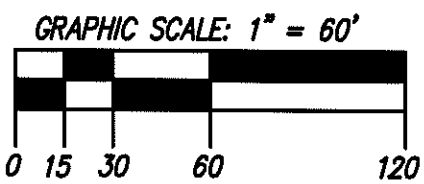
When Recorded Return to:  
Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

# EXHIBIT B

## UNDERGROUND DETENTION BASIN SYSTEM



APPROVED *DESC*  
*M. Two*  
 ROCHESTER HILLS  
 ENGINEERING DEPT.  
 12-09-2005



DB-2005-6913  
SHEET 2 OF 2

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CLIENT: FIFTH-THIRD BANK  
 DATE: 11-28-05 PJS  
 REV: 12-08-05 PJS

**MCS ASSOCIATES, INC.**  
 CIVIL ENGINEERING AND SURVEYING  
 44444 MOUND ROAD, SUITE 100  
 STERLING HEIGHTS, MICHIGAN 48314  
 TELEPHONE (586) 726-6310 FAX (586) 726-0042

# EXHIBIT A

## UNDERGROUND DETENTION BASIN SYSTEM

### LEGAL DESCRIPTION: (PROPOSED FIFTH-THIRD)

PART OF THE NORTHWEST 1/4 OF SECTION 23, T.3N., R.11E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS N01'55'12"E 2.36 FT. ALONG THE WEST LINE OF SAID SECTION 23 AND N89'38'14"E 66.05 FT. AND N01'55'12"E 82.81 FT. FROM THE WEST 1/4 CORNER OF SECTION 23, T.3N., R.11E.; THENCE N01'55'12"E 249.49 FT. ALONG THE EAST LINE OF ROCHESTER ROAD (66 FT. WIDE 1/2 RIGHT-OF-WAY); THENCE N89'37'35"E 220.00 FT.; THENCE S01'55'12"W 213.52 FT.; THENCE S89'38'30"W 30.00 FT.; THENCE S01'55'25"W 36.03 FT.; THENCE S89'38'30"W 190.00 FT. TO THE POINT OF BEGINNING.

CONTAINING 53,771 SQUARE FEET --- 1.234 ACRES, more or less.

SUBJECT TO AND TOGETHER WITH ANY EASEMENTS AND RESTRICTIONS AFFECTING TITLE TO THE ABOVE DESCRIBED PREMISES.

APPROVED *DESC*  
*M [Signature]*  
ROCHESTER HILLS  
ENGINEERING DEPT.  
*02-09-2005*

DB-2005-6913  
SHEET 1 OF 2

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CLIENT: FIFTH-THIRD BANK  
DATE: 11-28-05 PJS  
REV: 12-08-05 PJS

**MCS ASSOCIATES, INC.**  
CIVIL ENGINEERING AND SURVEYING  
44444 MOUND ROAD, SUITE 100  
STERLING HEIGHTS, MICHIGAN 48314  
TELEPHONE (586) 726-6310 FAX (586) 726-0042