

WATER MAIN EASEMENT AGREEMENT

THIS WATER MAIN EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this 1st day of November, 2005 between TCF National Bank, a national banking association,, whose address is 401 E. Liberty St., Ann Arbor, MI 48104 ("Grantor"), and the CITY OF ROCHESTER HILLS, a Michigan municipal corporation, whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 ("Grantee"), based upon the following:

A. Grantor is the owner of that certain real property located in the City of Rochester Hills, County of Oakland, State of Michigan that is more particularly described on Exhibit A attached to and made a part of this Agreement (the "Grantor's Property").

B. Grantee desires to construct, operate, inspect, maintain, repair, replace, remove, substitute and alter a water main and any improvements directly related thereto (the "Water Main") located in, under, across and through a twenty foot (20') wide area of the Grantor's Property, as more particularly described and depicted on Exhibit B attached to and made a part of this Agreement (the "Easement Area").

C. Grantee desires that Grantor grant, and Grantor is willing to grant, to Grantee a non-exclusive perpetual easement in, under, across and through the Easement Area for the operation and maintenance of the Water Main upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grantor grants to Grantee a non-exclusive perpetual easement (the "Easement") in, under, across and through the Easement Area for the purposes of constructing, inspecting, operating, maintaining, repairing, replacing, removing, substituting and altering the Water Main (the "Work"), together with the right of access in, under, across and through the Grantor's Property to the extent reasonably necessary to perform the Work.

2. The rights granted to Grantee pursuant to the Agreement shall at all times be exercised by Grantee in such a manner so as not to otherwise unreasonably interfere with, obstruct, impede, or delay the conduct and operations of Grantor or any lessee(s), tenant(s), or occupant(s) of Grantor and their respective employees, agents, contractors, customers, invitees, licensees and concessionaires in, on or about the Grantor's Property. All systems, structures, conduits, lines and/or other public utilities installed in connection with the Work shall be so installed and maintained below the ground level or surface of the Grantor's Property (except for such parts thereof that cannot and are not intended to be placed below the surface which shall be placed in such location as approved by Grantor).

3. Grantee will exercise reasonable care to avoid damage to the Easement Area or any other portion of the Grantor's Property. Grantee will be responsible for the supervision of all Work performed by

Grantee or its agents, employees, contractors or subcontractors in connection with use of the Easement Area and will take all precautions for the protection of all persons and of real and personal property situated adjacent to, abutting or in the vicinity of the Easement Area while Grantee or its agents, employees, contractors or subcontractors are performing the Work or otherwise on the Grantor's Property. As soon as reasonably practicable after the completion of any Work (and each portion of such Work) on the Water Main and/or the Easement Area, all portions of the Grantor's Property which have been disturbed or damaged during the course of such Work, if any, will be restored by Grantee to its immediately prior condition as existed prior to the performance of such Work, except with respect to any permanent improvements or alterations which were made and are necessary to the use and exercise of the Easement.

4. This Agreement will be subject to any easements, agreements, or restrictions of record or those matters that a personal inspection or an accurate survey of the Grantor's Property would reveal. The Easement, covenants, conditions, and promises set forth in this Agreement shall be covenants running with the land and shall be binding upon and shall inure to the benefit of Grantor and Grantee and their respective successors and assigns. In the event of a breach by Grantee of any of the terms, covenants, restrictions or conditions hereof, Grantor may pursue any and all rights and remedies which Grantor may have at law or in equity. As used herein, the term "Grantor" shall mean the fee owner(s) of the Grantor's Property, from time to time.

5. Grantor will have the right, from time to time, to relocate, at Grantor's sole cost and expense, the Easement Area (or any portion(s) thereof) and the Water Main, provided, that Grantor obtains the prior written consent of Grantee to any such relocation. In the event of any such relocation of the Easement Area and the Water Main, Grantor will, simultaneously with the relocation of the Easement Area and the Water Main, grant or cause to be granted to Grantee a new easement covering the area to which all or a portion of the Easement Area is relocated, and Grantee will release the Easement granted under this Agreement with respect to the portion of the Easement Area which is relocated.

6. Nothing contained in this Agreement shall be construed as restricting or prohibiting Grantor or its successors or assigns from (i) granting any additional rights, privileges or easements over the Grantor's Property or the Easement Area to any other person or entity, (ii) using or allowing the use of the ground above or below and/or the air space above the Easement Area for any purpose, provided, that the construction, operation, maintenance, repair and/or replacement of the Water Main will not be interfered with and Grantor obtains the prior written consent of Grantee to any such grant or use, and (iii) exercising Grantor's rights and privileges pursuant to any easements and agreements of record.

7. All construction, operations, inspections, repairs, and maintenance conducted by Grantee on the Easement Area shall be performed in conformity with safe practices and shall at all times be in compliance with all local, state and federal laws, statutes, rules, and regulations pertaining thereto.

8. Grantee will self-insure all liability and damage that may be caused to the Grantor's Property in connection with or as a result of the Work performed by Grantee or any of its agents, employees and contractors on the Grantor's Property or from any acts or omissions by Grantee or any of its agents, employees and contractors while on the Grantor's Property.

9. Grantee represents and warrants to Grantor that neither Grantee nor any of its agents, employees, contractors, subcontractors, licensees or invitees shall at any time store, handle, use, package, generate, place, treat, dispose, or allow to remain on the Easement Area or the Grantor's Property any hazardous substances, hazardous wastes, or toxic substances as those terms are defined and regulated under CERCLA, 42 U.S.C. 9601 et seq., RCRA, 42 U.S.C. 6901 et seq., or TSCA, 15 U.S.C. 2601 et seq. (hereinafter collectively referred to as "Hazardous Substances"). Grantee covenants to comply with all environmental laws and regulations and to take such other actions as may be required to protect against environmental liabilities. The terms and provisions of this paragraph will survive the termination of the

Easement.

10. Grantee will not commit or suffer to be committed any waste or nuisance upon the Easement Area. Grantee will take such action as may be reasonably necessary to prevent or terminate any such nuisance or waste arising out of Grantee's use of the Easement Area, including, without limitation, any nuisance created by employees, agents, contractors, subcontractors, licensees or invitees of Grantee.

11. Grantee will keep the Easement Area and the Grantor's Property and every part thereof free and clear of any and all liens and encumbrances for work performed by Grantee, or on Grantee's behalf, on the Easement Area.

12. If Grantee abandons the Easement or any other right, privilege and easement granted under this Agreement, it will promptly notify Grantor of such abandonment and execute and deliver to Grantor a recordable release of easement. Upon the abandonment and release of such Easement, all rights granted pursuant to this Agreement relative to such affected portion of the Easement, the Easement Area and/or Water Main shall cease and revert to Grantor and its respective successors and assigns.

13. Any notice, request, consent or certificate required or permitted to be delivered under this Agreement shall be given in writing and sent by (i) personal delivery, (ii) by United States certified mail, return receipt requested, postage prepaid, and properly addressed, or (iii) a reputable overnight delivery service (*e.g.*, Federal Express), with delivery charges prepaid and properly addressed. For the purposes hereof, the addresses of the parties, until further notice, shall be as follows:

If to Grantor: TCF National Bank
401 E. Liberty St.
Ann Arbor, Mi 48108
Attention: Larry M. Czekaj, Senior Vice President

If to Grantee: City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309
Attention: City Engineer

Notices shall be effective upon delivery or refusal of the addressee to accept delivery. Either party may designate another address for notice by notice given from time to time in accordance with this Paragraph 13.

14. The parties to this Agreement agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of Grantor, or its respective successors or assigns, and Grantee, or its respective successors or assigns, which consent shall not be unreasonably withheld, delayed or conditioned, evidenced by a document that has been fully executed and acknowledged by Grantor and Grantee and recorded in the official records of the Oakland County, Michigan Register of Deeds.

15. Invalidation of any of the provisions contained in this Agreement will in no way affect any of the other provisions of this Agreement and the remainder of this Agreement will remain in effect.

16. This Agreement (including all exhibits attached to this Agreement) represents the entire agreement between the parties with respect to the subject matter of this Agreement, and all prior or contemporaneous agreements or understandings with respect to the subject matter of this Agreement are merged in this Agreement.

17. No easements other than the Easement shall be implied by this Agreement, and nothing

contained herein shall be construed or deemed as creating any rights in, to or for the general public, or as being a gift or dedicating to the general public any portion of the Grantor's Property. Without limiting the foregoing, no right of way for pedestrian or vehicular traffic, roadway or walkway is granted under this Agreement, except as is necessary for Grantee to access the Easement Area pursuant to Paragraph 1 of this Agreement, nor are any easements for parking, signage, drainage or utilities, except for the Easement, granted or implied under this Agreement. Grantor shall have the right to temporarily close off or barricade or allow such closing-off or barricading of the Easement Area as is reasonably necessary to avoid any such gift or dedication to the public.

18. This Agreement shall be interpreted under and governed by the laws of the State of Michigan.

19. Nothing contained in this Agreement nor any acts of the parties performed pursuant to this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association among the parties to this Agreement.

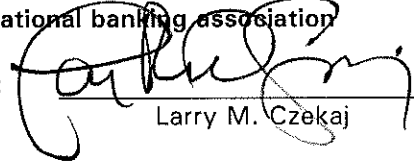
20. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

Grantor and Grantee have executed this Water Main Easement Agreement as of the date first above written.

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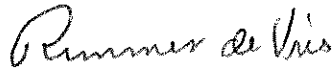
TCF NATIONAL BANK,
a national banking association

By:


Larry M. Czekaj

Its: Senior Vice President

By:


Rimmer de Vries

Its:

Vice President

"Grantor"

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation

By: _____

Its: _____

"Grantee"

ACKNOWLEDGMENT

STATE OF Michigan)
)§
COUNTY OF Washtenaw)

The foregoing instrument was acknowledged before me this 1st day of November, 2005, by Larry M. Czekaj, the Senior Vice President and Rimmer de Vries, the V.P. of TCF National Bank, a national banking association, for and on behalf of the Bank.

[Signature]
Notary Public, _____ County,
My commission expires: _____

KAREN A. PERRY
Notary Public, Livingston County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires September 18, 2007

ACKNOWLEDGMENT

STATE OF Michigan)
)§
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of the City of Rochester Hills, a Michigan municipal corporation, on behalf of such municipal corporation.

Notary Public, _____ County,
My commission expires: _____

Drafted by:
Peter DeLoof
Seeligson, DeLoof, Flopper & Dever, PLLC
401 E. Liberty, Ste 250
Ann Arbor, MI 48104

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

EXHIBIT A

LEGAL DESCRIPTION FOR PARCEL B (TCF BANK)

PART OF THE SOUTHEAST 1/4 OF SECTION 3, TOWN 3 NORTH, RANGE 11 EAST, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3,

THENCE, ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 3, NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 395.66 FEET TO THE POINT OF BEGINNING.

THENCE, CONTINUING ALONG SAID SOUTH LINE, NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 266.60 FEET; THENCE, LEAVING SAID SOUTH LINE, NORTH 08 DEGREES 12 MINUTES 40 SECONDS WEST, A DISTANCE OF 205.18 FEET; THENCE, NORTH 10 DEGREES 42 MINUTES 30 SECONDS WEST, A DISTANCE OF 67.99 FEET; THENCE, SOUTH 89 DEGREES 59 MINUTES 30 SECONDS EAST, A DISTANCE OF 231.79 FEET; THENCE, SOUTH 34 DEGREES 59 MINUTES 30 SECONDS EAST, A DISTANCE OF 28.10 FEET; THENCE, SOUTH 00 DEGREES 08 MINUTES 43 SECONDS EAST, A DISTANCE OF 30.71 FEET; THENCE, NORTH 86 DEGREES 49 MINUTES 35 SECONDS EAST, A DISTANCE OF 60.08 FEET; THENCE, SOUTH 00 DEGREES 08 MINUTES 43 SECONDS EAST, A DISTANCE OF 220.41 FEET TO A POINT ON SAID SOUTH LINE, SAME BEING THE POINT OF BEGINNING.

CONTAINING $\pm 74,023$ SQUARE FEET OR ± 1.699 ACRES. SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY OF RECORD.

Tax Parcel I.D. No.: 15-03-477-036

APPROVED *DESC*

M. T. ...

ROCHESTER HILLS
ENGINEERING DEPT.

04-10-2006

EXHIBIT B

WATER MAIN EASEMENT LEGAL DESCRIPTION FOR PARCEL B (TCF BANK)

A STRIP OF LAND 20.00 FEET IN WIDTH, BEING PART OF THE SOUTHEAST 1/4 OF SECTION 3, TOWN 3 NORTH, RANGE 11 EAST, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3,
THENCE, ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 3,
NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 395.66 FEET; THENCE NORTH 00 DEGREES 08 MINUTES 43 SECONDS WEST, A DISTANCE OF 75.00 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 17.20 FEET TO THE **POINT OF BEGINNING**.
THENCE DUE NORTH A DISTANCE OF 8.58 FEET; THENCE DUE WEST A DISTANCE OF 25.91 FEET; THENCE DUE EAST A DISTANCE OF 25.91 FEET; THENCE DUE NORTH A DISTANCE OF 87.11 FEET; THENCE NORTH 23 DEGREES 30 MINUTES 59 SECONDS WEST, A DISTANCE OF 51.88 FEET TO THE POINT OF ENDING.

ALSO,

A STRIP OF LAND 20.00 FEET IN WIDTH, BEING PART OF THE SOUTHEAST 1/4 OF SECTION 3, TOWN 3 NORTH, RANGE 11 EAST, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 3,
THENCE, ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 3,
NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 395.66 FEET; THENCE NORTH 00 DEGREES 08 MINUTES 43 SECONDS WEST, A DISTANCE OF 75.00 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 38 SECONDS WEST, A DISTANCE OF 249.92 FEET TO THE **POINT OF BEGINNING**.

THENCE NORTH 00 DEGREES 12 MINUTES 23 SECONDS EAST A DISTANCE OF 7.26 FEET; THENCE NORTH 08 DEGREES 15 MINUTES 05 SECONDS WEST A DISTANCE OF 190.60 FEET; THENCE NORTH 81 DEGREES 36 MINUTES 28 SECONDS EAST A DISTANCE OF 31.52 FEET TO THE POINT OF ENDING.

File No. 2516

Prepared Oct. 28, 2005

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APPROVED *REGC*
M. Carr
ROCHESTER HILLS
ENGINEERING DEPT.
04-10-2005