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REGISTER OF DEEDS

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2011 AUG 23 PM 1:03

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LIBER 43310 PAGE 295  
\$43.00 MISC RECORDING  
\$4.00 REMONUMENTATION  
08/23/2011 01:51:00 P.M. RECEIPT# 69079  
PAID RECORDED - OAKLAND COUNTY  
BILL BULLARD JR, CLERK/REGISTER OF DEEDS

**DECLARATION OF COVENANTS, CONDITIONS AND DEED RESTRICTIONS**

This DECLARATION OF COVENANTS, CONDITIONS AND DEED RESTRICTIONS (the "Declaration") is made for the benefit of the public this ~~18th~~ day of ~~August~~, 2011, by and between the Charter Township of Commerce, a Michigan municipal corporation with offices at 2009 Township Drive, Commerce Township, Michigan 48390 (the "Township") and the Michigan Department of Natural Resources, a state agency with offices at the Steven T. Mason Building, 530 West Allegan Street, Lansing, Michigan 48909-7528 (the "DNR") (collectively the "Parties"), upon the terms stated below.

**RECITALS**

WHEREAS, the DNR owns a certain tract of land located in Commerce Township, Michigan and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the DNR desires to sell the Property; and

WHEREAS, the Property possesses significant natural features (the "Conservation Values") including, but not limited to, creeks, ponds, associated riparian corridors, woodlands, meadows, and wetlands.

WHEREAS, the Township desires to purchase the Property for the purpose of preserving and maintaining it in its predominantly natural and open state; and

WHEREAS, the Parties desire that the Property shall be forever open for the purpose of public recreation and open space together with associated improvements and facilities to foster and enhance these purposes; and

WHEREAS, the Parties recognize and acknowledge that certain improvements to the Property are both necessary and appropriate to the use of the Property for the intended purposes; and

WHEREAS, the Parties desire that development on the Property shall be limited to improvements intended to enhance public use and enjoyment of the Property as predominantly open space for wildlife habitat, natural resource conservation, and outdoor recreation purposes while allowing limited activities of a commercial nature that are directly related to, or support, the use and enjoyment of the Property for these purposes such as the sale of food and beverage

products or supplies for use on site in connection with approved uses of the property, materials primarily of an educational nature, souvenirs, or other products used on or commonly associated with outdoor recreational activities; and

WHEREAS, the Parties have entered into an agreement to purchase the Property dated March 31, 2011 which requires, as a condition precedent to conveyance of the Property, that the Township covenant and agree to permanently restrict the use and development of the Property consistent with these recitals.

NOW, THEREFORE, the Parties covenant and agree as follows:

### **DECLARATION**

#### **I. Restrictions on Use and Development**

The following acts or uses shall be forever prohibited on, over, or under the Property, except as provided in Section II:

A. Construction, installation, or placement of improvements, including buildings, structures, shelters, roads, drives, parking lots, or other infrastructure or improvement;

B. Mining, excavating, dredging, or removing soil, loam, peat, gravel, sand, hydrocarbons, rock, or other mineral resource or natural deposit, from the Property, except in connection with those uses allowed in Section II;

C. Uses of the Property which are primarily commercial or industrial in nature, are not ancillary, related to, or conducted in support of or in conjunction with the allowable uses set forth in Section II, and are conducted for the primary purpose of commercial gain, except as specifically set forth in Section II, paragraph (F), below;

D. Cutting, removing, or otherwise destroying natural vegetation except in connection with activities allowed in Section II and intended uses of the Property; and

E. Any activity or use of the Property which would materially impair the Conservation Values unless such use or activity is appropriate for the protection of other Conservation Values that are the subject of this Declaration or is intended to enhance the outdoor recreation or open space values of the Property.

F. These provisions shall not apply to those rights retained by DNR in Section III.

#### **II. Uses Expressly Allowed; Rights Not Reserved**

The provisions of Section I notwithstanding, all remaining rights and responsibilities of ownership of the Property shall vest, without limitation, in the Township, except for those rights reserved by DNR in Section III. The following rights, uses, and activities of or by the Township

and its employees, agents, tenants, subtenants, licensees, permittees and guests shall be and remain expressly allowed:

A. The right to engage in all acts and uses that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration;

B. The right to construct, install, and place improvements, including buildings, structures, shelters, roads, drives, parking lots, paths, trails, decks, boardwalks, lighting, utilities serving the Property and other infrastructure so long as such improvement is specifically intended and only used to enhance the outdoor recreational value of the Property and to facilitate its use as an outdoor recreation resource. Such improvements may include, but not be limited to, an outdoor heritage education and recreation center appropriate for carrying on educational activities related to natural resource conservation, sheltered archery and gun ranges, fishing ponds and related facilities, trails, signage, lighting and related infrastructure;

C. The right to facilitate and engage in public outdoor recreational activities, including hunting and fishing, that are consistent with the purpose of this Declaration;

D. The right to construct, install and operate active outdoor recreation facilities and fields such as soccer, baseball, and football fields, tennis and basketball courts, and ice rinks in areas of the Property specifically delineated on Exhibit B, which areas have been previously developed, or are adjacent or proximate to areas previously developed, and which do not contain sensitive or valued natural environmental attributes or characteristics;

E. The right to operate and maintain all improvements, and to conduct, or cause or allow to be conducted, programs, meetings, classes, games, tournaments and other events consistent with the purposes set forth above on the Property;

F. The right to conduct, or cause or allow to be conducted, uses, activities and events ancillary, related to, or in support of, the otherwise allowable uses set forth herein, whether conducted by non-profit, or for profit commercial users, and without regard to whether a profit is, or may be, ultimately derived from the activity or event. Such activities and events may include, but shall not be limited to, food and beverage sales and service; sales or rental of equipment, supplies, clothing, educational materials, products and supplies related to uses permitted on the Property, memberships, sponsorships, subscriptions, tickets or other items related to or in support of the allowable uses; lessons, classes, or other instructional activities, games, contests, tournaments or similar events;

G. The right to charge fees for entrance to and use of the Property, and for attendance at programs or events conducted on the Property, in order to offset the costs of ownership, operation and maintenance of the Property;

H. The right to compost, burn, or store vegetative waste generated on or by the Property, and the right to collect and store for removal at reasonable intervals normal and

customary waste generated on or by the Property for recycling or other legal and proper disposal method;

I. The right to conduct forestry and resource management activities associated with proper natural area stewardship, habitat improvement, and management of invasive species and potential hazards on the Property, including, but not limited to, the removal of blowdowns, dead and diseased trees and trees that pose threats to persons or property, or that otherwise interfere with the allowed uses of the Property or the improvements thereon;

J. The right to grant easements for, or to otherwise authorize and permit, the installation, construction, maintenance, replacement and/or repair of public utilities; and

K. The right to establish partnerships with other public and private entities for the purpose of advancing the public recreation and open space purposes of this Declaration.

### **III. Affirmative Rights of DNR**

The DNR hereby reserves the following rights, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to the DNR:

A. To receive any revenue which may be generated by a grant of easement by the Township for pipelines, electric lines, telecommunication systems, and facilities for the intake, transportation, and discharge of water, including pipes, conduits, tubes, and structures usable in connection with the lines, telecommunication systems and facilities, except such rights or easements as may be granted by the Township, its successors or assigns in interest, for the purpose of installing, constructing, maintaining, replacing and/or repairing water mains, sanitary sewer lines, and/or stormwater management infrastructure on the Property.

B. To enforce this Declaration.

C. After providing the Township with at least sixty (60) days prior written notice and an opportunity to cure, to enforce this Declaration in the case of a breach or breaches by the Township by appropriate legal proceedings in a local court of competent jurisdiction.

### **IV. Obligations of Township**

A. To enforce this Declaration and prevent any activity on or use of the Property that is inconsistent with the purpose of this Declaration, and to require the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use;

B. To incorporate management of the Property into a Master Plan for township parks.

C. To indemnify and hold harmless the State of Michigan and all subagencies from

liability arising from acts of the Township on, or related to, the Property.

**V. Acts Beyond Township's Control.**

Nothing contained in this Declaration shall be construed to require the Township to restore the Property due to any injury to or change in the Property resulting from causes beyond the Township's control, including, without limitation, unauthorized actions of third parties, or acts of nature, including fire, flood, storm, and earth movement, major disease or invasion of non-native species, or from any prudent action taken by the Township under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude the DNR's and Township's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violation of the terms or provisions of this Declaration.

**VI. Costs.**

In connection with any action to enforce the terms or provisions of this Declaration, the successful party in the action, following any appeals, shall be entitled to recover the costs of such action, including actual attorneys fees, from the other party.

**VII. Legal Limitations.**

This Declaration neither grants nor reserves any rights not in compliance with laws of the State of Michigan.

**VIII. Covenants Run with the Land**

A. The Parties agree to incorporate by reference the terms of this Declaration in any deed or other legal instrument by which either Party transfers any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year. The failure of the Parties to perform any act required by this paragraph shall not impair the validity of this Declaration or limit its enforceability in any way.

B. The covenants, terms, conditions, and restrictions of this Declaration shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property, provided that no owner shall be responsible except for violations occurring on such owner's land while owner thereof.

**IN WITNESS WHEREOF**, the undersigned have executed the Declaration as of the date first written above.

THE CHARTER TOWNSHIP OF COMMERCE,  
A Michigan municipal corporation

Thomas K Zoner  
By: Thomas K. Zoner  
Its: Supervisor

Acknowledged before me in Oakland County, Michigan on August 11, 2011 by Thomas K. Zoner, the Supervisor of The Charter Township of Commerce, a Michigan municipal corporation, on behalf of the Township.

Judith A Dombrowski  
Notary Public Judith A Dombrowski  
Oakland County, Michigan  
My Commission Expires: 4-8-13

THE MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES, a state agency

Ed Meadows  
By: ED MEADOWS  
Its: RES MANAGER

Acknowledged before me in INGHAM County, Michigan on AUGUST 18, 2011 by ED MEADOWS, the RES MANAGER of The Michigan Department of Natural Resources, a state agency, on behalf of the Michigan Department of Natural Resources.

Walter Linn  
Notary Public WALTER LINN  
INGHAM County, Michigan  
My Commission Expires: 10-10-2012

Drafted by and when recorded return to:

Linda S. Mayer, Esq.  
Adkison, Need, & Allen, P.L.L.C.  
40950 Woodward Ave, Suite 300  
Bloomfield Hills, MI 48304

17-01-351-001  
Tax Parcel # 17-02-400-011 & 17-11-200-015  
Part of \_\_\_\_\_  
Recording Fee: \_\_\_\_\_  
Transfer Tax: Exempt

u:\cfc\dnr land purchase\docs\2011-07-19 declaration of restrictive covenants (final).doc

**EXHIBIT A  
LEGAL DESCRIPTION**

N:\15\15600\15685.61-Wise Rd ALTA\Certification-Legals\COMBINED DESCRIPTION AS FIELD SURVEYED REV.doc

COMBINED PARCEL DESCRIPTION  
(AS FIELD SURVEYED)

PARCELS: 17-01-351-001, 17-02-400-011, AND 17-11-200-015

PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 1, PART OF SECTION 2, AND PART OF THE NORTH 1/2 OF SECTION 11, TOWN 2 NORTH, RANGE 8 EAST, COMMERCE TOWNSHIP, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE CORNER COMMON TO SECTIONS 1, 2, 11 AND 12; THENCE S53°56'18"W, 3287.46 FEET; THENCE S01°46'44"E, 444.00 FEET; THENCE S87°09'37"W, 969.20 FEET; THENCE N01°31'53"W, 71.30 FEET; THENCE S53°27'18" W, 448.32 FEET; THENCE N02°17'37"W, 436.19 FEET; THENCE S87°13'16"W, 1011.14 FEET; THENCE N02°48'22"W, 726.00 FEET; THENCE S87°13'16"W, 330.00 FEET TO A POINT AT THE CENTERLINE OF CARROLL LAKE ROAD (66' WIDE); THENCE ALONG SAID CENTERLINE N02°48'23"W, 57.91 FEET; THENCE N87°02'38"E, 350.00 FEET; THENCE N02°48'22"W, 1193.97 FEET TO A POINT AT THE CENTERLINE OF WISE ROAD (VARIABLE WIDTH); THENCE ALONG SAID CENTERLINE N87°24'01"E, 1001.72 FEET; THENCE N02°36'51"W, 1142.53 FEET TO THE SOUTHEAST CORNER OF LOT 36 OF BLOCK 32 OF CARROLL LAKE HEIGHTS SUBDIVISION, AS RECORDED IN LIBER 28, PAGES 8 THROUGH 10, OAKLAND COUNTY RECORDS; THENCE THE FOLLOWING THREE COURSES ALONG THE EASTERLY AND SOUTHERLY LINES OF SAID SUBDIVISION: (1) N03°02'14"W, 1503.59 FEET TO A POINT AT THE SOUTHWEST CORNER OF LOT 1 OF BLOCK 21 OF SAID SUBDIVISION, AND (2) N86°52'07"E, 1365.40 FEET TO A POINT AT THE SOUTHEAST CORNER OF LOT 22 OF BLOCK 20 OF SAID SUBDIVISION, SAID POINT ALSO BEING THE CENTER OF SECTION 2, AND (3) N03°06'25"W, 1316.67 FEET TO A POINT AT THE NORTHEAST CORNER OF LOT 1 OF BLOCK 16 OF SAID SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION AND A POINT ON THE SOUTH LINE OF VENICE OF THE WOODS No. 3, AS RECORDED IN LIBER 146, PAGE 9, OAKLAND COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID VENICE OF THE WOODS No. 3 N87°25'08"E, 1370.29 FEET TO THE SOUTHEAST CORNER OF SAID PLAT, ALSO BEING A POINT ON THE WEST LINE OF BOULEVARD SUBDIVISION, AS RECORDED IN LIBER 20, PAGE 1, OAKLAND COUNTY RECORDS; THENCE ALONG SAID WEST LINE S04°12'39"E, 1.22 FEET TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE ALONG THE SOUTH LINE OF SAID SUBDIVISION, ALSO BEING THE SOUTH LINE OF ALFREDA STREET (26.2' WIDE), N87°30'15"E, 643.46 FEET TO A POINT AT THE NORTHWEST CORNER OF AMENDED PLAT OF LOTS 23 THROUGH 43, AND ALSO THE VACATED PORTION OF SAXTON BOULEVARD IN CRESCENT ISLAND AS RECORDED IN LIBER 284, PAGES 30 THROUGH 31, OAKLAND COUNTY RECORDS; THENCE ALONG THE WESTERLY LINE OF SAID PLAT, ALONG A NON-TANGENT CURVE TO THE RIGHT 243.63 FEET, SAID CURVE HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 26°35'20", AND A CHORD BEARING S05°04'13" E, 241.45 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT 1002.96 FEET, SAID CURVE HAVING A RADIUS OF 546.07 FEET, A CENTRAL ANGLE OF 105°14'03", AND A CHORD BEARING S44°06'35"E, 867.81 FEET; THENCE N87°12'12"E, 127.30 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION ALSO BEING ON THE WEST LINE OF HURON-WOODS-SUBDIVISION AS RECORDED IN LIBER 68, PAGE 21, OF OAKLAND COUNTY RECORDS; THENCE ALONG SAID

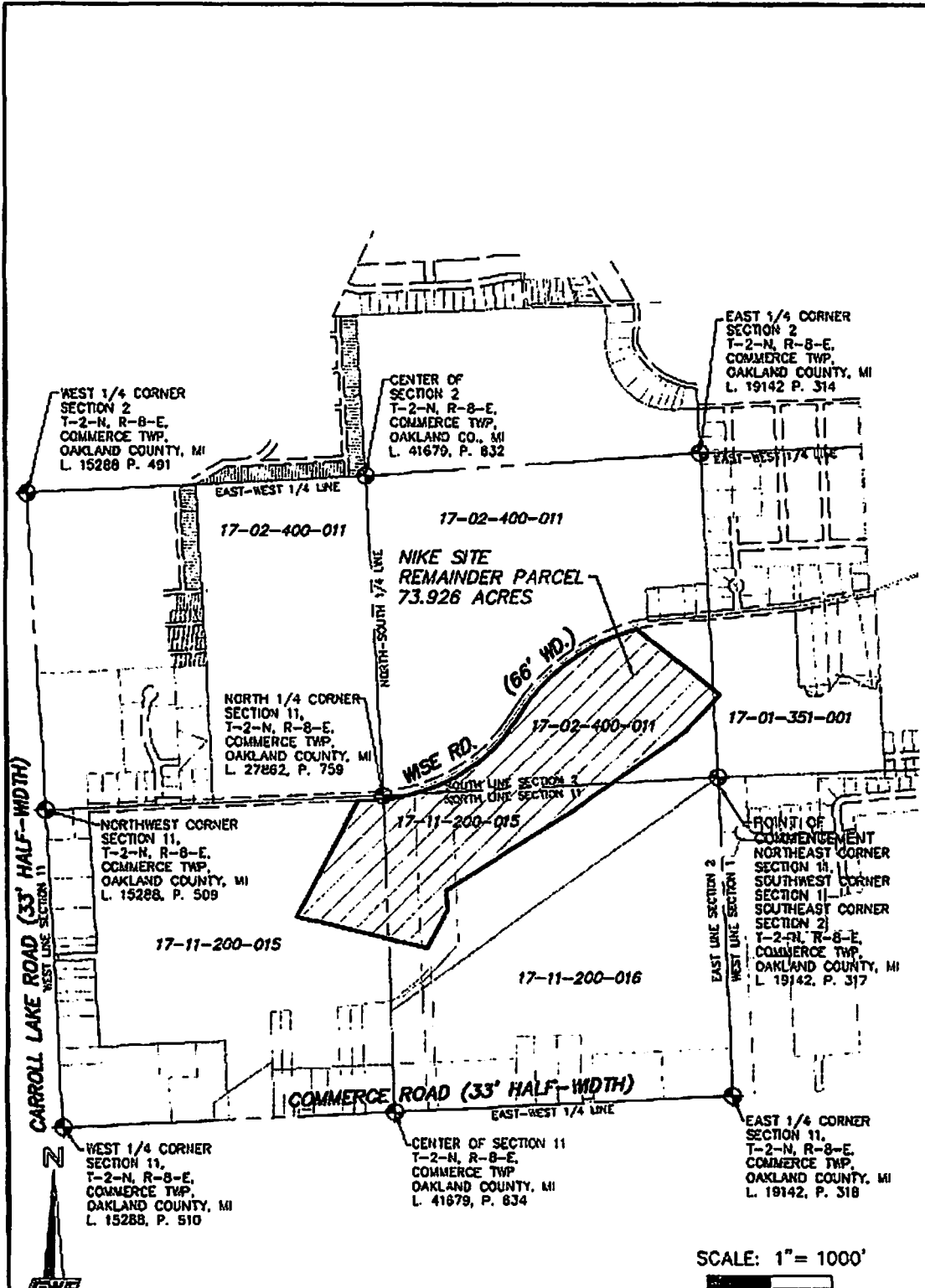


WEST LINE S03°00'39"E, 365.21 FEET TO THE EAST 1/4 CORNER OF SECTION 2; THENCE ALONG THE EAST LINE OF SECTION 2 S02°51'00"E, 1093.29 FEET; THENCE S85°32'50"W, 492.73 FEET; THENCE S02°51'49"E, 264.00 FEET; THENCE N85°32'50"E, 495.00 FEET TO A POINT BEING 2.34 FEET EAST OF THE LINE COMMON TO SECTIONS 1 AND 2, SAID POINT ALSO BEING AT THE CENTERLINE OF WISE ROAD (66' WIDE); THENCE ALONG SAID CENTERLINE N83°47'53"E, 689.55 FEET; THENCE S02°52'03"E, 659.00 FEET TO A POINT AT THE CENTERLINE OF HAYES CREEK, SAID POINT AT THE CENTERLINE IS N02°52'03"W, 100.00 FEET FROM A TRAVERSE POINT "A"; THENCE EASTERLY ALONG SAID CENTERLINE OF HAYES CREEK APPROXIMATELY 935 FEET TO A POINT WHICH IS N02°47'55"W, 100.00 FEET FROM A TRAVERSE POINT "B"; THE ABOVE MENTIONED CENTERLINE OF HAYES CREEK BEING TRAVERSED BY AN INTERMEDIATE TRAVERSE LINE SOUTHERLY OF THE CREEK BY THE FOLLOWING FOUR (4) COURSES FROM POINT "A" TO POINT "B": 1) S75°34'59"E, 204.81 FEET, AND 2) N34°22'20"E, 193.69 FEET, AND 3) S75°36'28"E, 249.55 FEET, AND 4) N82°02'35"E, 108.28 FEET TO SAID POINT "B"; THENCE FROM SAID POINT "B", S02°47'55"E, 506.83 FEET TO THE SOUTHWEST CORNER OF WILLOW CREEK SUBDIVISION, AS RECORDED IN LIBER 274, PAGES 28 THROUGH 29, OAKLAND COUNTY RECORDS, SAID POINT ALSO BEING THE NORTHWEST CORNER OF MOREY'S MANOR SUBDIVISION, AS RECORDED IN LIBER 88, PAGE 7, OAKLAND COUNTY RECORDS; THENCE ALONG THE WEST LINE OF SAID MOREY'S MANOR SUBDIVISION S02°14'11"E, 146.93 FEET TO A POINT ON THE SOUTH LINE OF SECTION 1; THENCE S87°38'24"W, 1347.89 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 518 ACRES, MORE OR LESS, WHICH INCLUDES ALL LANDS BETWEEN THE INTERMEDIATE TRAVERSE LINE AND THE CENTERLINE OF HAYES CREEK.

THE ABOVE DESCRIBED PARCEL IS SUBJECT TO THE PRESCRIPTIVE RIGHT OF WAY (66' WIDE) FOR WISE ROAD AND CARROLL LAKE ROAD (66' WIDE).

**EXHIBIT B**

**ACTIVE RECREATION AND FACILITIES LOCATION**



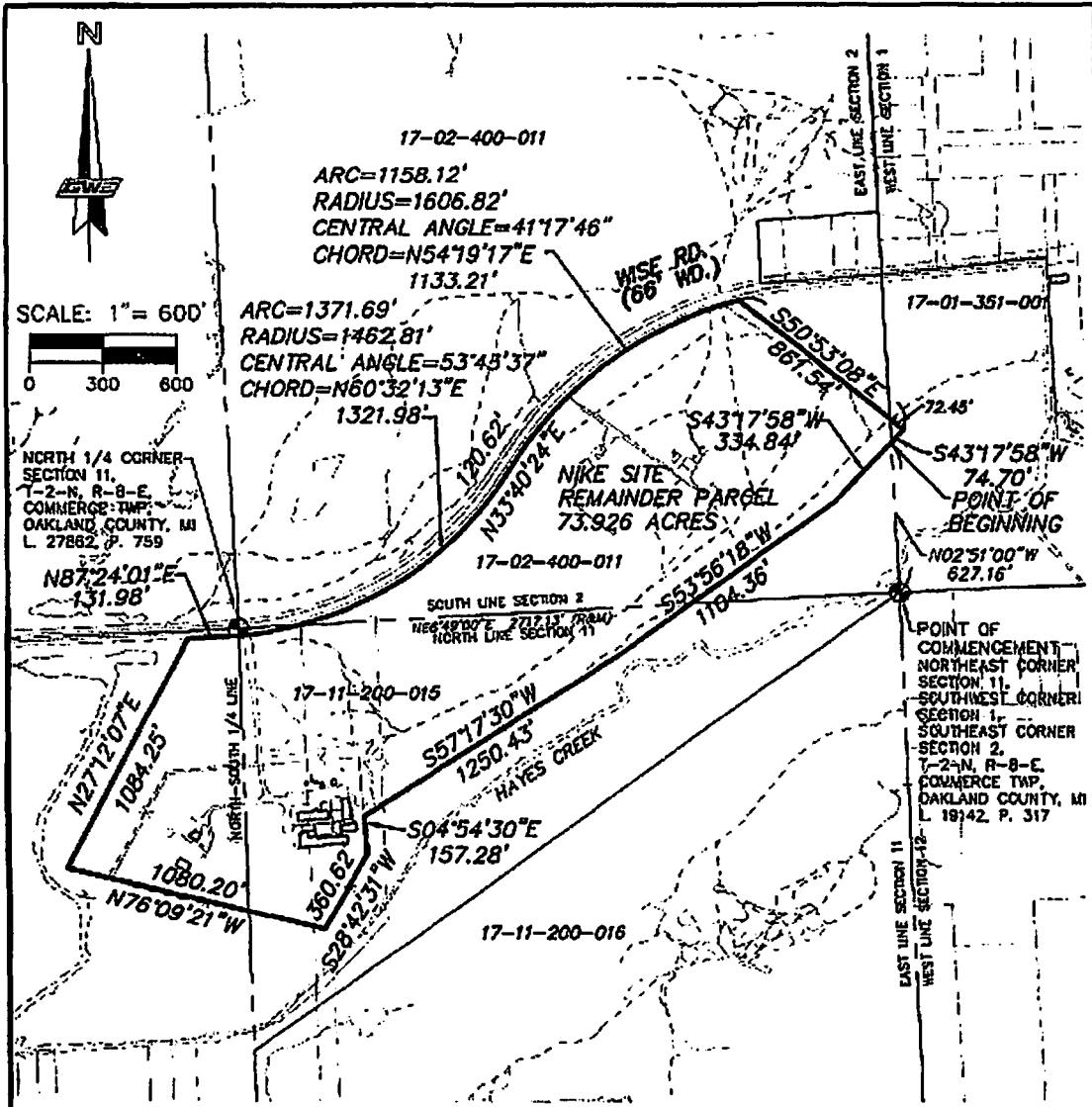
**SKETCH OF DESCRIPTION  
NIKE SITE REMAINDER PARCEL**

A PART OF THE SOUTHWEST 1/4 OF OF THE SOUTHWEST 1/4 OF SECTION 1, THE SOUTHEAST 1/4 OF SECTION 2 AND THE NORTH 1/2 OF SECTION 11 T-2-N, R-8-E, COMMERCE TOWNSHIP, OAKLAND COUNTY, MICHIGAN

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**Giffels-Webster Engineers, Inc.**  
 ENGINEERS LAND SURVEYORS PLANNERS LANDSCAPE ARCHITECTS  
 2871 BOND STREET, ROCHESTER HILLS, MI 48309  
 (248) 852-3100

DATE: 06/27/11	CHECKED BY: A.L.G.	DATE: 06/11	SCALE: 1"=1000'
DRAWN: J.Z.B.			SHEET: 1 OF 2
DESIGN:			JOB No: 15685.61
SECTION: 1, 2 & 11	T-2-N, R-8-E		



SCALE: 1" = 600'  
 0 300 600

NORTH 1/4 CORNER SECTION 11, T-2-N, R-8-E, COMMERCE TWP, OAKLAND COUNTY, MI L. 27882 P. 759

POINT OF COMMENCEMENT NORTHEAST CORNER SECTION 11, SOUTHWEST CORNER SECTION 1, SOUTHEAST CORNER SECTION 2, T-2-N, R-8-E, COMMERCE TWP, OAKLAND COUNTY, MI L. 18142 P. 317

**NIKE SITE REMAINDER PARCEL**  
 A PART OF PARCELS: 17-01-351-001, 17-02-400-011, AND 17-11-200-015

PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 1, PART OF THE SOUTHWEST 1/4 OF SECTION 2, AND PART OF THE NORTH 1/2 OF SECTION 11, TOWN 2 NORTH, RANGE 8 EAST, COMMERCE TOWNSHIP, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE CORNER COMMON TO SECTIONS 1, 2, 11 AND 12; THENCE N02°51'00"W, 627.16 FEET ALONG THE EAST LINE OF SAID SECTION 2 TO THE POINT OF BEGINNING; THENCE S43°17'58"W, 334.84 FEET; THENCE S53°56'18"W, 1104.36 FEET; THENCE S57°17'30"W, 1250.43 FEET; THENCE S04°54'30"E, 157.28 FEET; THENCE S28°42'31"W, 360.62 FEET; THENCE N78°09'21"W, 1080.20 FEET; THENCE N27°12'07"E, 1084.25 FEET TO A POINT ON THE SOUTHERLY 66 FEET PRESCRIPTIVE RIGHT OF WAY LINE OF WISE ROAD; THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID RIGHT OF WAY LINE: (1) N87°24'01"E, 131.98 FEET AND (2) ALONG A TANGENT CURVE TO THE LEFT 1371.89 FEET, SAID CURVE HAVING A RADIUS OF 1462.81 FEET, A CENTRAL ANGLE OF 53°43'37", AND A CHORD BEARING N60°32'13"E, 1321.98 FEET, AND (3) N33°40'24"E, 120.62 FEET, AND (4) ALONG A TANGENT CURVE TO THE RIGHT 1158.12 FEET, SAID CURVE HAVING A RADIUS OF 1606.82 FEET, A CENTRAL ANGLE OF 41°17'46", AND A CHORD BEARING N54°19'17"E, 1133.21 FEET; THENCE S50°53'08"E, 861.54 FEET TO A POINT, SAID POINT BEING S50°53'08"E, 72.45 FEET FROM THE EAST LINE OF SECTION 2; THENCE S43°17'58"W, 74.70 FEET; TO THE POINT OF BEGINNING AND CONTAINING 73.926 ACRES OF LAND.

**SKETCH OF DESCRIPTION**  
**NIKE SITE REMAINDER PARCEL**

A PART OF THE SOUTHWEST 1/4 OF OF THE SOUTHWEST 1/4 OF SECTION 1, THE SOUTHWEST 1/4 OF SECTION 2 AND THE NORTH 1/2 OF SECTION 11 T.-2-N., R.-8-E., COMMERCE TOWNSHIP, OAKLAND COUNTY, MICHIGAN

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**GWE**  
**Giffels-Webster Engineers, Inc.**  
 SURVEYORS PLANNERS LANDSCAPE ARCHITECTS  
 2871 BOND STREET, ROCHESTER HILLS, MI. 48069  
 (248) 852-3100

DATE: 06/27/11	CHECKED BY: A.L.G.	DATE: 06/11	SCALE: 1"=600'
DRAWN: J.Z.B.			SHEET: 2 OF 2
DESIGN:			
SECTION: 1, 2 & 11	T.-2-N., R.-8-E.		JOB No: 15685.61