



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

DOUGLAS LAKEFRONT
PROPERTIES, LLC.,

Plaintiff,

FILE NO: 08-42855-CZ

HON. KEVIN W. CRONIN

vs.

CITY OF THE VILLAGE OF DOUGLAS,
a Michigan Municipal Corporation,
the CITY OF THE VILLAGE OF DOUGLAS'
PLANNING COMMISSION, MATT BALMER,
GREG HARVATH, RENEE WADDELL,
DIANE BAILEY, JANE MAYER, MARTHA
HOEXTER, ROBERT MOORE, and KAREN
VANPELT, JOHN PIGGINS, RON DELLARTINO,
CHRISTOPHER NERN, DAVID BURDICK,
and ALEXA URQUHART, individually,

Defendants.

James E. Spurr (P33049)
James L. Liggins (P66816)
Attorneys for Plaintiff
Miller, Canfield, Paddock & Stone
277 South Rose Street
Kalamazoo, MI 49007
Telephone: 269/381-7030

Michael S. Bogren (P34835)
Attorney for Defendants
Plunkett Cooney
535 S. Burdick Street, Ste. 256
Kalamazoo, MI 49007
Telephone: 269/226-8822

CONSENT JUDGMENT

Upon stipulation and consent of the parties, by and through undersigned counsel,
the Court finds as follows:

A. Plaintiff Douglas Lakefront Properties, L.L.C., (hereafter referred to as
Plaintiff), a Michigan limited liability corporation, is the owner of certain undeveloped

real property in the City of the Village of Douglas (hereafter referred to as the Property). The Property is undeveloped land located north of Blue Star Highway and east of Union Street with frontage on the Kalamazoo River. (A legal description of the Property is attached as Exhibit A).

B. Defendant City of the Village of Douglas (hereafter referred to as the City), is a Michigan municipal corporation organized and existing under the laws of the State of Michigan and located in Allegan County, Michigan. Defendant City of the Village of Douglas' Planning Commission (hereafter Planning Commission) is a commission of the City created pursuant to state law and City Charter, but is not a separate municipal corporation apart from the City. The individual defendants are current or former members of the City's Council and/or Planning Commission.

C. The Property is zoned R-4 Residential pursuant to the City's Zoning Ordinance and Zoning Map.

D. At various times beginning in May 2006 the Plaintiff, through its agent T. A. Scott Construction submitted to the City various proposals for a residential development on the Property.

E. The Plaintiff's development proposals, submitted by its agent T. A. Scott Construction, were referred to the Planning Commission for review and consideration.

F. None of the Plaintiff's various development proposals received final formal approval or denial by the City Council.

G. Plaintiff filed the instant action, Docket No. 08-42855-CZ, on or about March 3, 2008 in the 48th Circuit Court for the County of Allegan, asserting numerous claims against the defendants and alleging that a failure to give final approval or denial of

the development proposals from May 2006 until March 2008 violated the Michigan and United States constitutions and violated Michigan zoning enabling statutes. Plaintiff sought equitable relief and monetary damages. Plaintiff also alleged that the City had committed trespass and waste on a portion of the Property.

H. Defendants filed an Answer and Affirmative defenses, denying any violation of the Plaintiff's constitutional rights and denying liability to the Plaintiff.

I. The parties have engaged in extensive settlement discussions through Facilitation, pursuant to the Court's Pre-Trial Order and Order Regarding Facilitation dated August 8, 2008.

J. The parties acknowledge that there exists a mutual opportunity to resolve this litigation in accordance with the terms and conditions of this Consent Judgment, in order to avoid further costs and expenses, the uncertainty of a trial and to obtain finality, without any admission of liability or wrongdoing on the part of any party.

NOW, THEREFORE, pursuant to the agreement and stipulation of the parties, through their counsel, and as approved by the Plaintiff and the City of the Village of Douglas City Council, and the Court having determined that the terms of this Consent Judgment are reasonable and appropriate, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Property shall continue to be zoned as R-4 Residential pursuant to the City's Zoning Ordinance.
2. Plaintiff shall be permitted to develop and use the Property as a residential condominium development in accordance with this Consent Judgment and the Site Plan

attached as Exhibit B and made a part of this Consent Judgment. The Site Plan shall be signed and sealed by the Plaintiff's Engineer prior to entry of this Consent Judgment.

3. The parties agree that the Site Plan will allow 16 residential condominium units to be developed on the Property, specifically as depicted in the Site Plan attached as Exhibit B (hereafter referred to as the Development).

4. The parties agree that approval of this Consent Judgment constitutes site plan approval under Article XXIV of the City of the Village of Douglas Zoning Ordinance, with the exception of the requirements of Section 24.02(10) and (12), regarding the location of utilities and the location and design of water supply, stormwater management facilities, waste water systems and landscaping. Plaintiff shall submit additional plans and data addressing these issues which shall be subject to review and approval by the City Engineer and City Planner and such other governmental agencies with jurisdiction over such matters. Additionally, the issuance of any permits that would normally be available upon site plan approval is conditioned upon Plaintiff obtaining approval and necessary permits from the Michigan Department of Environmental Quality (MDEQ) to construct the boardwalk adjacent to the Kalamazoo River as depicted on the Site Plan attached as Exhibit B.

5. Pursuant to Section 24.06(1) of the Zoning Ordinance it is understood and agreed that no changes shall be made to the Site Plan attached as Exhibit B except for "small changes" in the location of buildings and structures; adjustment of utilities, walkways, trafficways, parking areas and similar small changes based upon previously unknown or unanticipated facts disclosed as a result of detailed engineering and field conditions. Such small changes shall be submitted for approval by the Zoning

Administrator in consultation with the City Planner and, if necessary, the City Engineer. Approval shall be granted unless the proposed small changes would violate a requirement of this Consent Judgment, the Zoning Ordinance or other ordinance, State or Federal law.

6. The boardwalk is the public benefit associated with the Development and will be open to the public 24 hours a day, seven days a week, unless otherwise directed by the MDEQ. The Plaintiff shall grant an easement for public access to the boardwalk at the eastern and western portion of the property, as depicted on the Site Plan attached as Exhibit B. Both of these areas are depicted as park area on the Site Plan attached as Exhibit B. The form and content of the easement shall be approved by the City Attorney and shall be recorded with the Allegan County Register of Deeds. The boardwalk shall be owned and maintained by the Condominium Association associated with the Development. The area designated for the easement shall be landscaped, irrigated and maintained at the same standards as the other common areas depicted on the Site Plan attached as Exhibit B. Certificates of Occupancy shall not be issued for any unit until such time as the boardwalk has been completed or until the Plaintiff has deposited financial security acceptable to the City (i.e. Letter of Credit or other mutually agreeable instrument) sufficient to complete construction of the boardwalk.

The Plaintiff shall apply to the MDEQ for necessary permits to construct the boardwalk as soon as possible after entry of this Consent Judgment. The City shall cooperate with Plaintiff in obtaining any necessary permits from the MDEQ for construction of the boardwalk. The City shall provide requested communication to the MDEQ stating its agreement with the issuance of necessary permits for construction of the boardwalk.

A final order of the MDEQ failing or refusing to issue necessary permits for the construction of the boardwalk shall result in revocation of the terms of this Consent Judgment and shall result in termination of the Development as depicted on the Site Plan attached as Exhibit B. The Plaintiff shall not be deemed to have obtained any vested rights or interest in any work done or expenses incurred up to the time of such a failure or denial of the MDEQ to issue necessary permits for the construction of the boardwalk and shall not be allowed to proceed with the Development as a prior nonconforming use or on any other basis. The City shall not be estopped from taking any and all enforcement action available to it with respect to the Property in the event of a final order of the MDEQ failing or refusing to issue necessary permits for construction of the boardwalk.

In the event of a final order of the MDEQ failing or refusing to issue necessary permits for the construction of the boardwalk, the Plaintiff may re-apply for development of the Property pursuant to the terms of the Zoning Ordinance in effect at the time of the re-application.

7. Upon approval of this Consent Judgment and final engineered plans and construction drawings; upon compliance with Paragraph 4; and upon application and payment of required fees by Plaintiff or its agents, the City shall process and issue necessary permits for site development and construction of units, consistent with and subject to the terms and conditions of this Consent Judgment. Issuance of permits shall not unreasonably be delayed or withheld. Such permits for construction shall not be issued until such time as all necessary permits have been issued by the MDEQ for construction of the boardwalk as detailed in Paragraphs 4 and 6.

8. The Consent Judgment and Development are subject to review and approval by the Fire Chief.

9. Plaintiff shall construct Washington Street as depicted on the Site Plan attached as Exhibit B.

10. The extension of utilities to serve this residential development shall be at the sole responsibility and expense of the Plaintiff and all improvements depicted on the Site Plan on or off the property shall be completed prior to any occupancy permit being issued by the City. The Plaintiff shall also provide all necessary easements for utilities, the boardwalk and sidewalks as required by City standards and the City Engineer.

11. The Development shall be subject to all reviews and approvals required by City, County, State, Federal or other local or intergovernmental agencies having jurisdiction over the Development, except as explicitly provided in this Consent Judgment. All such approvals shall be presented to the City with the application to start any construction on the Property. The Development shall comply with all applicable building codes. Any retaining walls constructed on the Property shall be certified by a registered structural engineer.

12. The provisions of Section 24.06(3) of the Zoning Ordinance in effect at the time of entry of the Consent Judgment shall apply to the Development upon entry of this Consent Judgment.

13. The provisions of the Zoning Ordinance of the City of the Village of Douglas in effect at the time of entry of this Consent Judgment shall apply to the Property and to the Development except as otherwise explicitly provided in this Consent Judgment. In the event of a conflict between the provisions of the Zoning Ordinance and

the provisions of this Consent Judgment, the provisions of Consent Judgment shall control. In the event that a zoning standard is not addressed on the Site Plan or in this Consent Judgment, the provisions of the Zoning Ordinance shall control.

14. This Consent Judgment is declared to be in recordable form, and the provisions contained herein are declared to be covenants running with the land and all portions or divisions thereof, and shall be binding on all successors and assigns of the parties, and the Allegan County Register of Deeds shall record a true copy of this Consent Judgment in the land records of Allegan County.

15. Reference in this Consent Judgment to "Plaintiff" shall mean and refer to Douglas Lakefront Properties, L.L.C., and to its successors, assigns and transferees and the terms and conditions of this Consent Judgment shall be binding upon those successors, assigns and transferees.

16. The terms of this Consent Judgment may be amended, changed or modified only upon written agreement of the parties except as otherwise provided in this Consent Judgment and any such changes must be approved and ordered by this Court. The parties are not obligated or required to agree to any change in any of the terms of this Consent Judgment except as provided in Paragraph 5.

17. Except as otherwise explicitly provided in this Consent Judgment, all claims asserted by the Plaintiff in this lawsuit, including claims for money damages, equitable relief, attorneys fees and costs, are merged into this Consent Judgment and forever barred. All claims against the individual defendants shall be deemed to be dismissed with prejudice and without costs or attorney fees.

18. This Court retains jurisdiction to enforce the terms of this Consent Judgment, but this matter shall be administratively closed upon entry of the Consent Judgment.

Date: 3-4-09

KEVIN CRONIN

Hon. Kevin W. Cronin
Allegan County Circuit Court Judge

ATTEST: A TRUE COPY
Jamie Spurr
DEPUTY CLERK

Date: 1-5-09

Matthew Ballmer
Matthew Ballmer
Mayor, City of the Village of Douglas

Date: 1-29-09

Michael S. Bogren
Michael S. Bogren (P34836)
Attorney for Defendants

Date: _____

Douglas Lakefront Properties, L.L.C.
By: _____
Its: _____

Date: _____

James E. Spurr (P33049)
Attorney for Plaintiff

Branches.00580.80981.1749298-1

18. This Court retains jurisdiction to enforce the terms of this Consent Judgment, but this matter shall be administratively closed upon entry of the Consent Judgment.

Date: _____

Hon. Kevin W. Cronin
Allegan County Circuit Court Judge

Date: _____

Matthew Balmer
Mayor, City of the Village of Douglas

Date: _____

Michael S. Bogren (P34835)
Attorney for Defendants

Date: 2-18-09

Th A. S.
Douglas Lakefront Properties, L.L.C.
By: Th A. S.
Its: Th A. S.

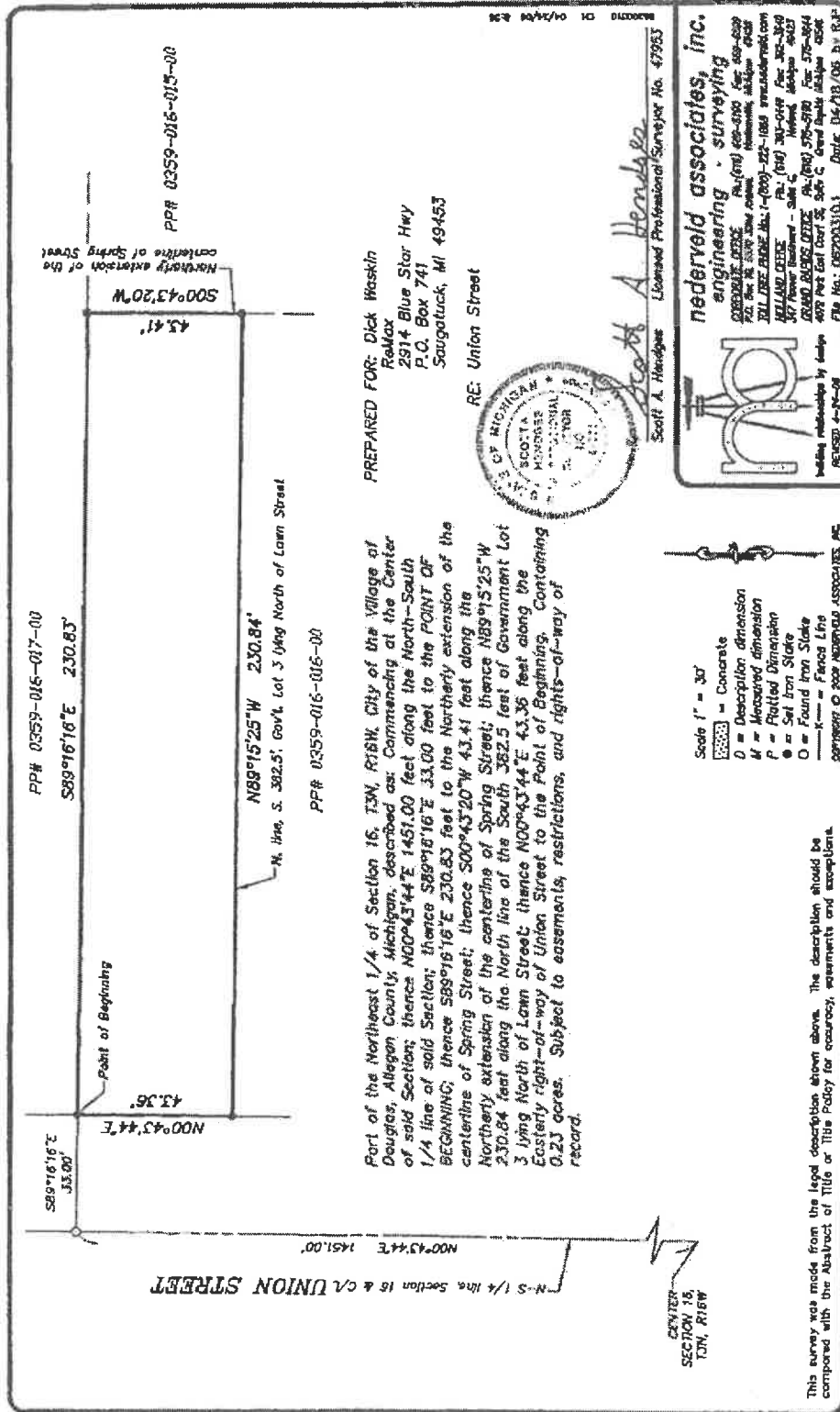
Date: 2-18-09

James E. Spurr
James E. Spurr (P33049)
Attorney for Plaintiff

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EXHIBIT A



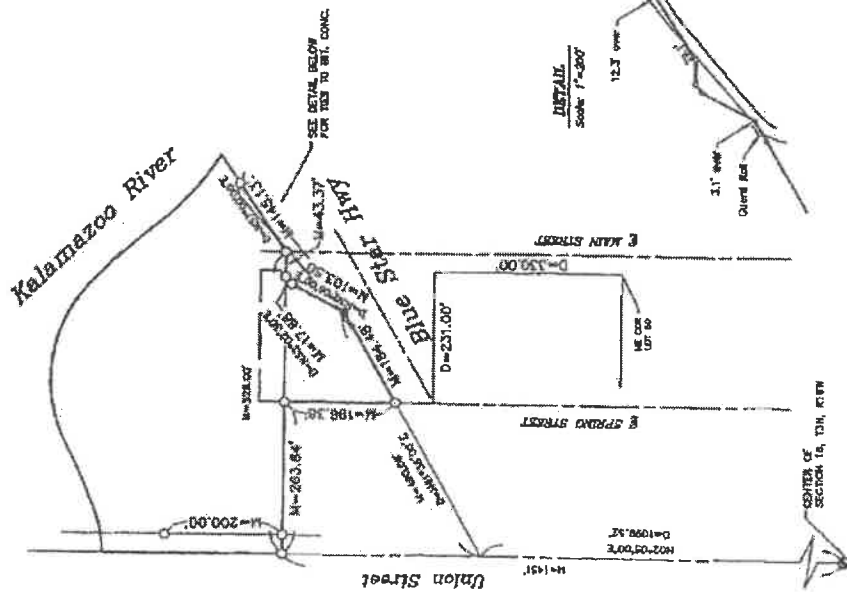
PREPARED FOR: The King Company
Attn: Cecil Moore
13520 Barry Street
Holland, MI 49424
Phone: 616-399-1784

RE: Blue Star

The land referred to in this Commitment, situated in the County of Allegan, Village of Douglas, State of Michigan, is described as follows:

Beginning 330 feet North of the Northeast corner of Lot 50 of the "Map of the Town of Douglas", thence West to the center of Spring Street as extended being about 231 feet, thence North to a line running East and West through a point at the intersection of the centerline of Main Street as extended and a line through the center of Swing Bridge 306 feet, thence East to Main Street, thence South to the point of beginning, which lies Northwesterly of a line described as: Beginning at a point on the North and South 1/4 line of said Section 16 which is North 2 degrees 05 minutes East 1099.52 feet from the center of said Section 16, thence North 61 degrees 35 minutes East 490.08 feet, thence North 30 degrees 08 minutes East 103.5 feet, thence North S2 degrees 02 minutes 30 seconds East 100 feet to a point of ending.

ALSO: Commencing at a point 1451 feet North of the center 1/4 post of Section 16, thence East 528 feet to the center of Main Street, thence North 57 degrees East along the center of said Street 205 feet to the edge of Kalamazoo Lake, thence Northwesterly the South edge of Kalamazoo Lake to the North and South 1/4 line of Section 16, thence South on said North and South 1/4 line to a point 1451 feet North of the center 1/4 post of said Section 16.



This survey was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, omissions and exceptions.

15% 10/02/21 5 51310112

Scott A. Hendy
Professional Surveyor
State of Michigan
License No. 47553

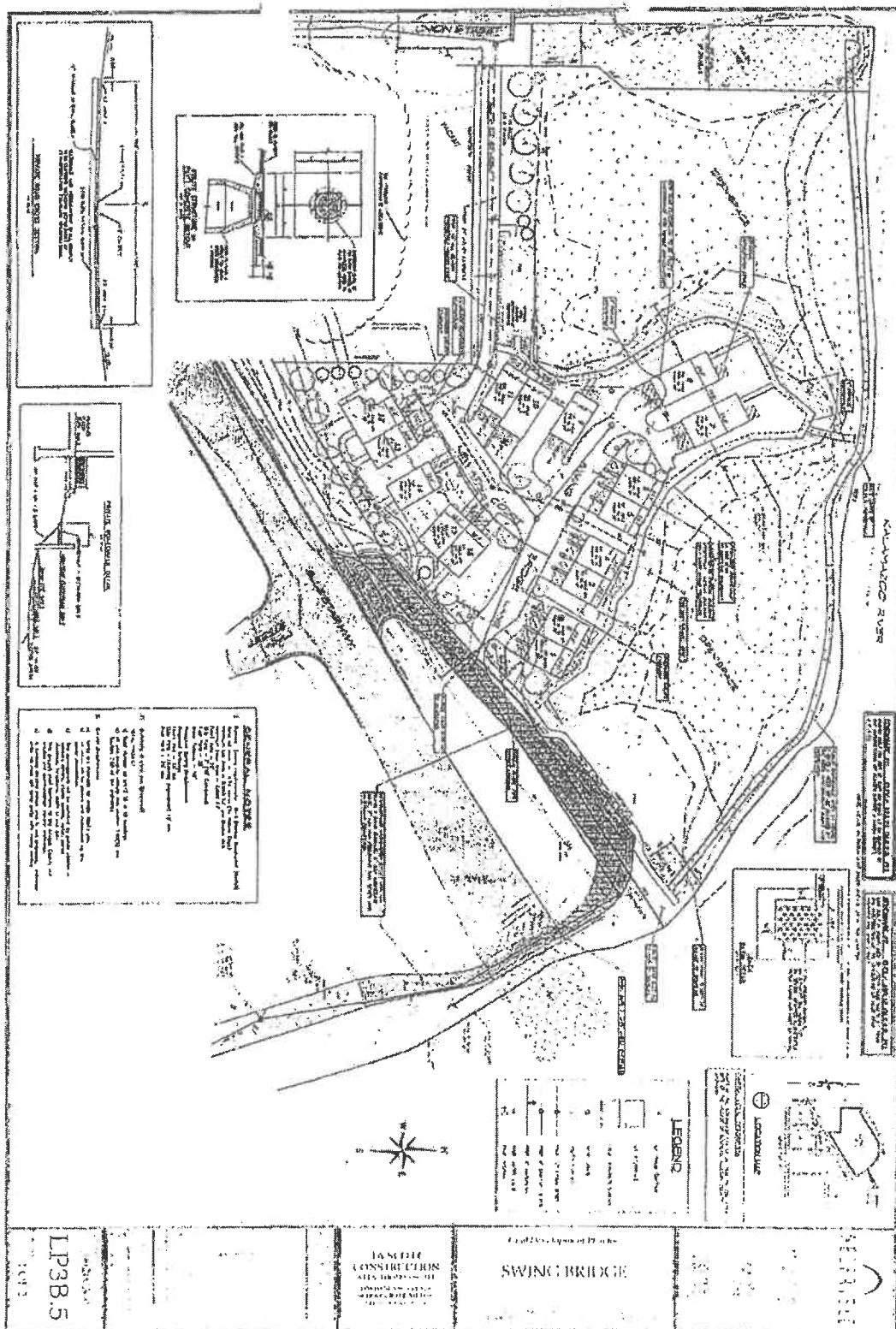
nederfeld associates, inc.
engineering • surveying

Lebanon Office PA 610-350-0000 Fax 610-350-0040
347 Hoover Boulevard, Suite C, Holland, Michigan 49423
Grand Rapids Office PH 616-950-5100 Fax 616-950-0000
P.O. Box 10, 5570 2nd Avenue, Hollandville, Michigan 49428

File No. 01201675 Date: 12.7.01 BY: JAT



EXHIBIT B



Page 1 of 1

STATE OF MICHIGAN Allegan County
Joyce A. Watts Register of Deeds

RECORDED

September 28, 2012 11:31:34 AM

Liber 3660 Page 27-27 AFF
FEE: \$14.00

Liber 3660 Page 27 #2012020106

**AFFIDAVIT OF CORRECTION RE: EXHIBIT A TO MASTER DEED OF THE
BOARDWALK AT SWING BRIDGE RECORDED IN LIBER 3566 PAGE 575**STATE OF MICHIGAN)
COUNTY OF KALAMAZOO)

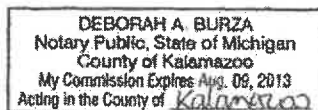
Shaun P. Willis, being sworn, says:

1. I am the attorney for T.A. Scott Construction.
2. Exhibit A to the Master Deed of the Boardwalk at Swing Bridge, the ByLaws, is amended to remove Section 5, (d), Right of First Refusal language.
3. I have personal knowledge of the facts set forth in this affidavit, and if sworn as a witness, can testify competently to these facts

Date

9/26/12

Shaun P. Willis

Subscribed and sworn to before me by Shaun P. Willis on 9-26-12.
_____, Notary Public
Kalamazoo County, MI
My commission expires: 8-9-13
Acting in Kalamazoo CountyDrafted by and when recorded, return to:
Shaun P. Willis (P62441)
491 W. South Street
Kalamazoo, MI 49007
(269) 492-1040

SMU