

CITY of NOVI CITY COUNCIL

**Agenda Item C
November 22, 2010**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Nadlan 32, LLC for the Beck North Corporate Park Phase II – Unit 32 development located at 30275 Hudson Drive, between West and Beck Roads in Section 4 (parcel 22-04-152-020).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *[Signature]* *R14*

BACKGROUND INFORMATION:

Nadlan 32, a Michigan LLC, requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the Beck North Corporate Park Phase II, Unit 32 site, located at 30275 Hudson Drive (located between West and Beck Roads, in Section 4 of the City of Novi). The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's November 11, 2010 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Nadlan 32, LLC for the Beck North Corporate Park Phase II – Unit 32 development located at 30275 Hudson Drive, between West and Beck Roads in Section 4 (parcel 22-04-152-020).

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				



November 11, 2010

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Farmington Hills, MI 48333-3040
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Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Rob Hayes, Public Services Director
CITY OF NOVI
Public Services – DPW Garage
26300 Delwal Drive
Novi, MI 48375

**Re: Beck North II, Unit 32
Utilities Review for Acceptance
Our File No. 660095.NOVI**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the following documents for Brightmoor Christian Church in Section 1 of the City:

1. Sanitary Sewer System Easement
2. Water System Easement
3. Bill of Sale
4. Title Commitment
5. Maintenance and Guarantee Bond
6. Storm Drainage Facility Maintenance Easement Agreement

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

Nadlan 32, LLC, the current owner of Unit 32 of Beck North II, seeks to convey water and sanitary sewer system facilities, as well as corresponding easements for operation, maintenance and repair of the water and sewer facilities to the City of Novi. Our office has prepared and approves the format and language of the Water and Sanitary Sewer System Easements and corresponding Bills of Sale. The City's Engineering Division has reviewed and approved the legal descriptions of the Easements and Bill of Sale. As such, we recommend acceptance of the Easements and the corresponding Bills of Sale.

We have confirmed title is currently in Nadlan 32, LLC with a mortgage to Comerica Bank. All necessary "consents" have been signed by the lender.

The property owner has requested a waiver of the Maintenance and Guarantee Bond requirement for utilities.

Generally, the terms of a maintenance and guarantee bond require the developer to repair or replace defective water mains and/or sanitary sewer lines for two years from the time of formal acceptance of the facilities by the City.

Section 1-12 of the Ordinance Code permits the City Council to grant a variance from provisions of the City of Novi Code, including Section 26.5-10 regarding maintenance and defect guarantees for site improvements, as well as the previous maintenance and guarantee bond requirements in effect prior to the adoption of Chapter 26.5, when the property owner shows all of the following:

- (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.

Subject to approval of the bond waiver, the Water and Sanitary Sewer System Easements may be accepted by Affidavit of the City Engineer. Once accepted, the Water and Sanitary Sewer System Easements should be recorded with the Oakland County Register of Deeds. The Bill of Sale should remain in the City's file. The Storm Drainage Facility Maintenance Easement Agreement should be placed on the next City Council Agenda for approval.

It should be noted that it is our understanding that the property is being transferred to a new owner within the next two weeks. As such, it is our recommendation that the Water and Sanitary Sewer System Easements and Storm Drainage Maintenance Easement Agreement be recorded prior to that date.

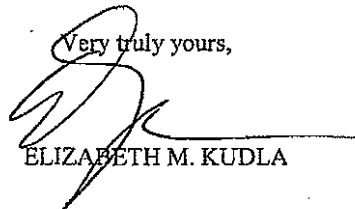
Rob Hayes, Public Services Director

November 11, 2010

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elizabeth M. Kudla', written over a horizontal line.

ELIZABETH M. KUDLA

EMK

Enclosures

C: Maryanne Cornelius, Clerk (w/Original Enclosures)
Marina Neumaier, Assistant Finance Director (w/Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, Deputy Community Development Director (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Jackie Varney, Amson Dembs (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

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STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 6th day of October, 2010, by and between Nadlan 32, a Michigan LLC, whose address is 26090 Lannys Rd. (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, MI 48375 (hereinafter the "City").

RECITATIONS:

A. Owner is the owner and developer of a certain parcel of land situated in Section 4 of the City of Novi, Oakland County, Michigan, described on the attached and incorporated Exhibit A (the "Property"). Owner has received final site plan approval for construction of a commercial development on the Property.

B. The Development, shall contain certain storm drainage facilities, for the collection, conveyance, treatment and/or discharge of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE, the Owner hereby covenants and agrees that the Owner shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage facilities to insure that the same continue to function as intended. The Owner shall establish a regular and systematic program of maintenance (the "Schedule of Maintenance") for such facilities and areas to insure that the physical condition and intended function of such areas and facilities shall be preserved and maintained. The Schedule of Maintenance and the annual estimated costs for maintenance and repairs for the first three (3) years are described in the attached Exhibit B.

In the event that the Owner shall at any time fail to carry out the responsibilities specified within this agreement, and/or in the event of a failure to preserve and/or maintain the storm water drainage facilities in reasonable order and condition, the City may serve written notice upon the Owner setting forth the deficiencies in maintenance and/or preservation along with a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place for a hearing before the City for the purpose of allowing Owner an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following such hearing, the person conducting the hearing shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, as determined by the City in its reasonable discretion, the City shall thereupon have the power and authority, but not the obligation, to enter upon the Property, or cause its agents or contractors to enter the Property and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary for the purposes described above. The cost and expense of making and financing such actions by the City, including notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in an amount equivalent to twenty-five (25%) percent of the total of all such costs and expenses incurred, shall be paid by Owner within thirty (30) days of a billing to the Owner. All unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the Owner, and, in such event, the Owner shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

The parties hereto make this Agreement on behalf of themselves, their heirs, successors, assigns and transferees, and hereby warrant that they have the authority and capacity to execute this Agreement and bind the property as described in the terms and conditions of this agreement.

Invalidation of any of these covenants or conditions by Judgment or Court Order shall in no way affect the validity of any other provision which shall remain in full force and effect.

This agreement shall run with the land and be binding upon all owners, their agents, heirs, successors, assigns and transferees.

IN WITNESS WHEREOF, Owner has executed this Agreement as of the day and year first above set forth.

OWNER NADLAN 32, LLC
An Michigan Limited Liability
Company.
By: [Signature]
Its: member

STATE OF MICHIGAN)
COUNTY OF OAKLAND)SS)

The foregoing instrument was acknowledged before me this 16th day of October, 2010
by Ryan Dembs, as the member of Nadlan 32 LLC

JACLYN M. VARNEY
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND,
MY COMMISSION EXPIRES Oct 22, 2013
ACTING IN THE COUNTY OF

Notary Public Jaclyn M Varney
Oakland County, Michigan
My Commission Expires: 10/22/13

CITY OF NOVI
A Municipal Corporation

By:
Its:

STATE OF MICHIGAN)
COUNTY OF OAKLAND)SS)

The foregoing instrument was acknowledged before me on this _____ day of _____
200____, by _____ on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Oakland County, Michigan
My Commission Expires: _

Drafted by:
Elizabeth M. Kudla
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040

And when recorded return to:
Maryanne Cornelius, City Clerk
City of Novi 45175 W. Ten
Mile Rd Novi, MI 48375

602691.vi

EXHIBIT A

LEGAL DESCRIPTION PER TITLE COMMITMENT WS09254:

UNIT 32, "BECK NORTH CORPORATE PARK CONDOMINIUM", ACCORDING TO THE MASTER DEED RECORDED IN LIBER 35825, PAGE 628 THROUGH 694 INCLUSIVE, AS AMENDED BY FIRST AMENDMENT TO MASTER DEED RECORDED IN LIBER 38007, PAGES 475 THROUGH 489 INCLUSIVE, AS AMENDED BY SECOND AMENDMENT TO MASTER DEED RECORDED IN LIBER 39407, PAGES 534 THROUGH 550 INCLUSIVE, OAKLAND COUNTY RECORDS, AND DESIGNATED AS OAKLAND COUNTY CONDOMINIUM SUBDIVISION PLAN NO. 1759, TOGETHER WITH RIGHTS IN THE GENERAL COMMON ELEMENTS AND THE LIMITED COMMON ELEMENTS AS SHOWN ON THE MASTER DEED AND AS DESCRIBED IN ACT 59 OF THE PUBLIC ACTS OF 1978, AS AMENDED.

EXHIBIT B

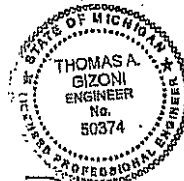
Maintenance Tasks and Schedule During Construction Components

Tasks	Storm Sewer	Catch Basin	Catch Basin	Outflow Control	Schedule
	System	Sumps	Inlet Castings	Structures	
Inspect for sediment accumulation		X	X	X	Weekly
Removal of sediment accumulation		X	X	X	As needed & prior to turnover
Inspect for floatables and debris		X	X	X	Quarterly
Cleaning of floatables and debris		X	X	X	Quarterly & at turnover
Wet weather inspection of structural elements, (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer	X			X	As needed & at turnover
Make adjustments or replacements as determined by wet weather inspection	X			X	As needed

Permanent Maintenance Tasks and Schedule Components

Tasks	Storm Sewer	Catch Basin	Catch Basin	Outflow Control	Schedule
	System	Sumps	Inlet Castings	Structures	
Inspect for sediment accumulation	X	X		X	Annually
Removal of sediment accumulation	X	X		X	Every 2 years as needed
Inspect for floatables and debris		X	X	X	Annually
Cleaning of floatables and debris		X	X	X	Annually
Wet weather inspection of structural elements, (including inspection for sediment accumulation in detention basins) with as-built plans in hand. These should be carried out by a professional engineer	X			X	Annually
Make adjustments or replacements as determined by wet weather inspection	X			X	As needed
Keep records of all inspections and maintenance activities	X	X	X	X	Annually
Keep records of all costs for inspections, maintenance, and repairs	X	X	X	X	Annually

Maintenance Plan Budget	
Annual inspection for sediment accumulation	\$100
Removal of sediment every 2 years as needed	\$500
Inspect for floatables and debris annually and as needed	\$100
Removal of floatables and debris annually and as needed	\$150
Total annual budget	\$850



Thomas A. Gizoni

ALPINE
ENGINEERING, INC.
CIVIL ENGINEERS & LAND SURVEYORS

45882 WEST ROAD -
SUITE 109
NOVI, MICHIGAN 48377
(248) 926-3781 (BUS)
(248) 926-3785 (FAK)

CLIENT:	DATE: 5/30/05
AMSON-DEMBS DEVELOPMENT	DRAWN BY: TAG
STORM WATER MAINTENANCE EXHIBIT B	CHECKED BY: DJL
UNIT 10/11, & PART OF UNIT 9 OF BECK NORTH CORPORATE PARK	D: NTS
SECTION: 4 TOWNSHIP: 1N RANGE: 8E	PK: [Signature]
CITY OF NOVI OAKLAND COUNTY MICHIGAN	CHK: [Signature]
	SCALE: HOR 1" = [Signature] FT. VER 1" = [Signature] FT.