



CITY of NOVI CITY COUNCIL

**Agenda Item G
January 24, 2011**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from The Kroger Company of Michigan for the Kroger Facility Engineering Office development located at 40393 Grand River Avenue, between Joseph and Bashian Drives in Section 24 (parcel 22-24-327-010).

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

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

BACKGROUND INFORMATION:

The Kroger Company of Michigan requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the Kroger Facility Engineering Office site, located at 40393 Grand River Avenue (located between Joseph and Bashian Drives, in Section 24 of the City of Novi). The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's January 7, 2011 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from The Kroger Company of Michigan for the Kroger Facility Engineering Office development located at 40393 Grand River Avenue, between Joseph and Bashian Drives in Section 24 (parcel 22-24-327-010).

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

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

Location Map

Kroger Facility Engineering Office



Map Author: Aaron J. Staup
 Date: January 19, 2011
 Project: Kroger Facility Engineering Office - SDFMEA
 Version #: ArcMap 10

Amended By:
 Date:
 Department:

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 232 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



1 inch = 257 feet



City of Novi

Engineering Division
 Department of Public Services
 26300 Delwal Drive
 Novi, MI 48375
cityofnovi.org



January 7, 2011

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

Rob Hayes, Public Services Director
CITY OF NOVI
26300 Delwal Drive
Novi, Michigan 48375

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secrestwardle.com

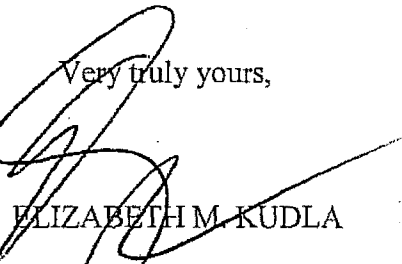
**Re: Kroger Facility Engineering Office SP10-24A
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660189.NOVI**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for the Kroger Facility Engineering Office site. Subject to the approval of the exhibits by the City's consulting engineer, the Storm Drainage Facility Maintenance Easement Agreement is in order and may be placed on an upcoming City Council Agenda for approval. We will forward the original Agreement to the City Clerk upon our receipt. Once approved and executed by the City, the Agreement should be recorded with Oakland County Records by the City Clerk's Office.

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

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

C: Maryanne Cornelius, Clerk (w/ Enclosure)
Marina Neumaier, Assistant Finance Director (w/Enclosure)
Charles Boulard, Community Development Director (w/Enclosure)
Barb McBeth, Deputy Community Development Director (w/Enclosure)
Aaron Staup, Construction Engineering Coordinator (w/Enclosure)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)
Sheila Weber, Treasurer's Office (w/Enclosure)
Taylor Reynolds and Ted Meadows, Spalding DeDecker (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

1553768_1.doc

**STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT**

THIS STORM DRAINAGE FACILITY MAINTENANCE EASEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2011, by and between The Kroger Co. Of Michigan, a Michigan corporation, whose address is 40399 Grand River Avenue, Suite 110, Novi, Michigan 48375 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 W. Ten Mile Road, Novi, Michigan 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 Office development on the Property.

B. The Commercial Office Development shall contain certain storm drainage, detention and/or retention facilities, including but not limited to, a detention/sedimentation basin for the collection, conveyance, storage, 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, detention and retention facilities, including all wetlands which are part of the system, 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, detention and retention 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 through the Ingress/Egress Easement Area as described and depicted in Exhibit C and perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary with respect to the detention/sedimentation basin within the Detention/Sedimentation Basin Easement Area described and depicted in Exhibit D, 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 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.

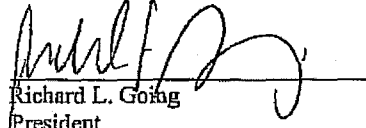
The parties hereto make this Agreement on behalf of themselves, their heirs, successors, assigns and transferees, and hereby warrant that they have the authority and capacity to execute this Agreement and bind the property as described in the terms and conditions of this agreement.

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 Storm Drainage Facility Maintenance Agreement as of the day and year first above set forth.

OWNER:
The Kroger Co. Of Michigan,
a Michigan corporation

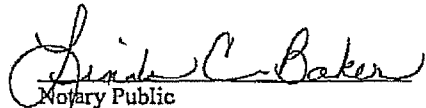


By: Richard L. Going
Its: President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 5th day of January 2011, by Richard L. Going, President of The Kroger Co. of Michigan, a Michigan corporation, on behalf of the corporation.

LINDA C. BAKER
Notary Public, State of Michigan
County of Wayne
My Commission Expires Dec. 17, 2011
Acting in the County of Oakland


Notary Public
Oakland County, Michigan
My Commission Expires: Dec. 17, 2011

CITY OF NOVI
A Municipal Corporation

By:
Its:

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this ____ day of _____ 2011, 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

602691v1

EXHIBIT A

LEGAL DESCRIPTION

(Provided by Client, prepared by Lady Survey Group)

The land referred to is located in the City of Novi, County of Oakland, State of Michigan, and is described as follows:

Part of the Southwest 1/4 of Section 24, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point on the North and South 1/4 line of Section 24, distant N. 02°36'43" W. 1810.39 feet from the South 1/4 corner of Section 24, Town 1 North, Range 8 East, and proceeding thence North 71 degrees 12 minutes 52 seconds West 134.73 feet; thence N. 02°36'43" W. 558.13 feet to a point on the centerline of Grand River Avenue; thence along centerline of Grand River Avenue South 71 degrees 12 minutes 52 seconds East 134.73 feet; thence along the North and South 1/4 line of Section 24 S. 02°36'43" E. 558.13 feet to the point of beginning. Except that part, token, used or deeded for Grand River Avenue.

Assurance Note: The above legal description describes the same property as in Schedule A of Title Commitment No. N-105080 of Lawyers Title Insurance Corporation bearing an effective date of October 16, 2009 at 8:00 A.M.

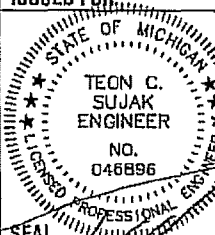
ISSUED FOR:	REV'D BY:	ISSUED FOR:	REV'D BY:
		Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 2031 COOLIDGE HIGHWAY TROY, MI 48060 PHONE: 248-865-0431 FAX: 248-865-0432 EMAIL: SUJAK.ENGINEERING@COMCAST.NET	
		PROJECT: KROGER OFFICE PHASE II	
DRAWN BY TCS		JOB No. 10-014	
DATE 10-03-10		SHEET No. 1	
		SCALE 1"=60'	
		DESCRIPTION PROPERTY DESCRIPTION	

EXHIBIT B

STORM WATER MANAGEMENT SYSTEM MAINTENANCE TASKS AND SCHEDULE

COMPONENTS	SCHEDULE	TASKS
DITCHES & SWALES	ANNUALLY AS NEEDED (FOREBAY TO BE CLEANED WHENEVER VOLUME IS REDUCED TO 30% OR MORE DUE TO SEDIMENT ACCUMULATION)	INSPECT FOR SEDIMENT ACCUMULATION
RIP-RAP	ANNUALLY AND AFTER MAJOR EVENTS	REMOVAL OF SEDIMENT ACCUMULATION (VACUUM TRUCK)
OVERFLOW STRUCTURES	AS NEEDED	INSPECT FOR FLOATABLES, DEAD VEGETATION AND DEBRIS
OUTLET STRUCTURES	2 - TIMES A YEAR	REMOVAL OF FLOATABLES, DEAD VEGETATION AND DEBRIS
STORM SEWER SYSTEM	ANNUALLY	MONITOR PLANTINGS/VEGETATION
DETENTION BASIN/FOREBAY	AS NEEDED	ENSURE MEANS OF ACCESS FOR MAINTENANCE REMAIN CLEAR/OPEN
BASIN INLETS, OUTLETS & GRATINGS	AS NEEDED	REPAIR/STABILIZE AREA OF EROSION
	AS NEEDED	REPLACE DEAD PLANTINGS, BUSHES & TREES
	AS NEEDED	STRUCTURAL REPAIRS
	AS NEEDED	MAKE ADJUSTMENTS TO ENSURE PROPER FUNCTIONING
	2 - TIMES PER YEAR	SWEEP PARKING AREAS & DRIVES
	CLEANED OUT IMMEDIATELY	OIL & GASOLINE SPILLS
	AS NEEDED	REESTABLISH VEGETATION
	EVERY 3 - 5 YEARS, AS NEEDED	REPLACE OUTLET FILTER STONE

THE OWNER AND/OR ASSOCIATION SHALL MAINTAIN A LOG OF ALL INSPECTION AND MAINTENANCE ACTIVITIES AND MAKE THE LOG AVAILABLE TO CITY PERSONNEL AS NEEDED.

ANNUAL BUDGET \$2,000.00

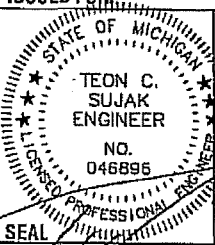
ISSUED FOR:	REV'D BY:	ISSUED FOR:	REV'D BY:
		Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 1031 COOLIDGE HIGHWAY ROY, MI 48068 PHONE: 248.885-6431 FAX: 248.885-0432 EMAIL: SUJAK.ENGINEERING@COMCAST.NET	
DRAWN BY: TCS JOB No. 10-014 DATE 10-03-10 SHEET No. 1 SCALE 1" = 60'		PROJECT: KROGER OFFICE PHASE II DESCRIPTION: STORM WATER MANAGEMENT MAINTENANCE SCHEDULE	

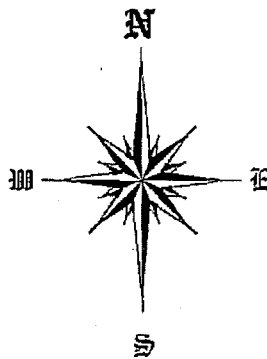
EXHIBIT C

CENTER SECTION 24
T1N, R8E
STATE PLAN
COORDINATES

**LEGAL DESCRIPTION -
INGRESS/EGRESS EASEMENT**

A 20' WIDE INGRESS/EGRESS EASEMENT LOCATED IN THE CITY OF NOVI, COUNTY OF OAKLAND, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

PART OF THE SOUTHWEST 1/4 OF SECTION 24, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT A POINT ON THE NORTH AND SOUTH 1/4 LINE OF SECTION 24, DISTANT DUE NORTH 1810.39 FEET AND NORTH 71 DEGREES 12 MINUTES 52 SECONDS WEST 134.73 FEET (R) ALONG THE SOUTH PROPERTY LINE NORTH 2 DEGREES 36 MINUTES AND 43 SECONDS WEST (M) 114.03 FEET AND NORTH 87 DEGREES 23 MINUTES 19 SECONDS EAST 5.00 FEET TO THE POINT OF BEGINNING OF THE CENTER LINE OF THE PROPOSED 20 FOOT WIDE EASEMENT; THENCE ALONG SAID CENTERLINE NORTH 87 DEGREES 23 MINUTES 19 SECONDS EAST 40.69 FEET; THENCE ALONG A CURVE TO THE LEFT RADIUS 15.00 FEET CHORD 21.21 FEET BEARING NORTH 42 DEGREES 23 MINUTES 18 SECONDS EAST; THENCE NORTH 2 DEGREES 36 MINUTES 43 SECONDS WEST 151.00 FEET; THENCE ALONG A CURVE TO THE LEFT RADIUS 15.00 FEET CHORD 21.21 FEET BEARING NORTH 47 DEGREES 36 MINUTES 43 SECONDS WEST; THENCE SOUTH 87 DEGREES 23 MINUTES 17 SECONDS 33.56 FEET TO THE POINT OF ENDING.



PROPOSED
INGRESS/EGRESS
EASEMENT

N 87°23'19" E
5.00'

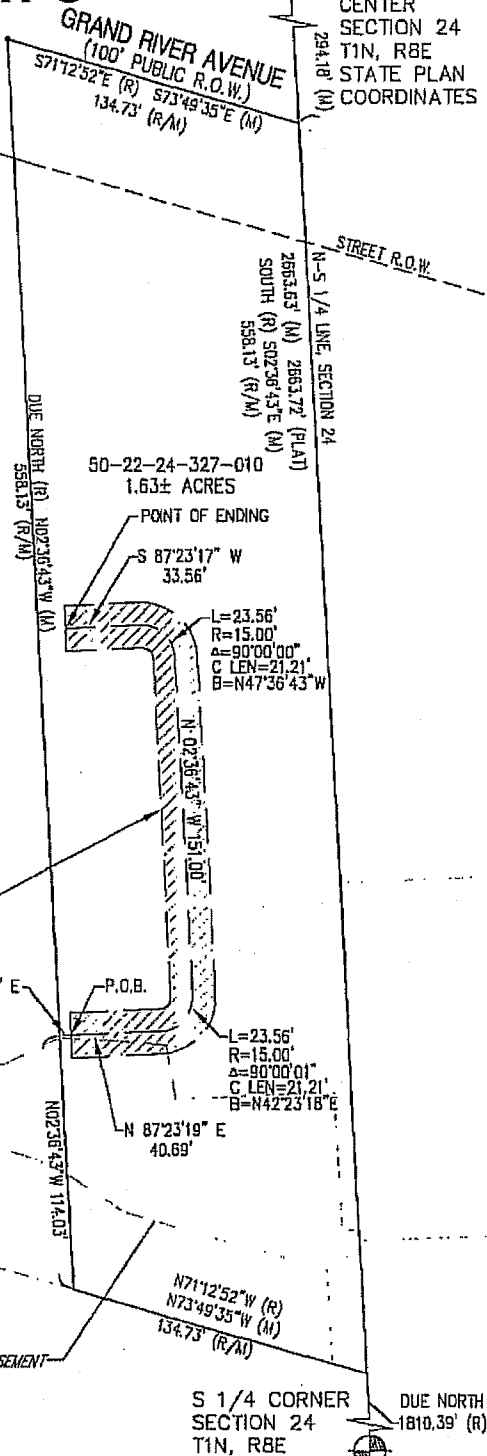
P.O.B.

N 87°23'19" E
40.69'

EXISTING EASEMENT

N71°12'52" W (R)
N73°49'35" W (M)
134.73' (R/M)

S 1/4 CORNER SECTION 24
T1N, R8E
DUE NORTH 1810.39'



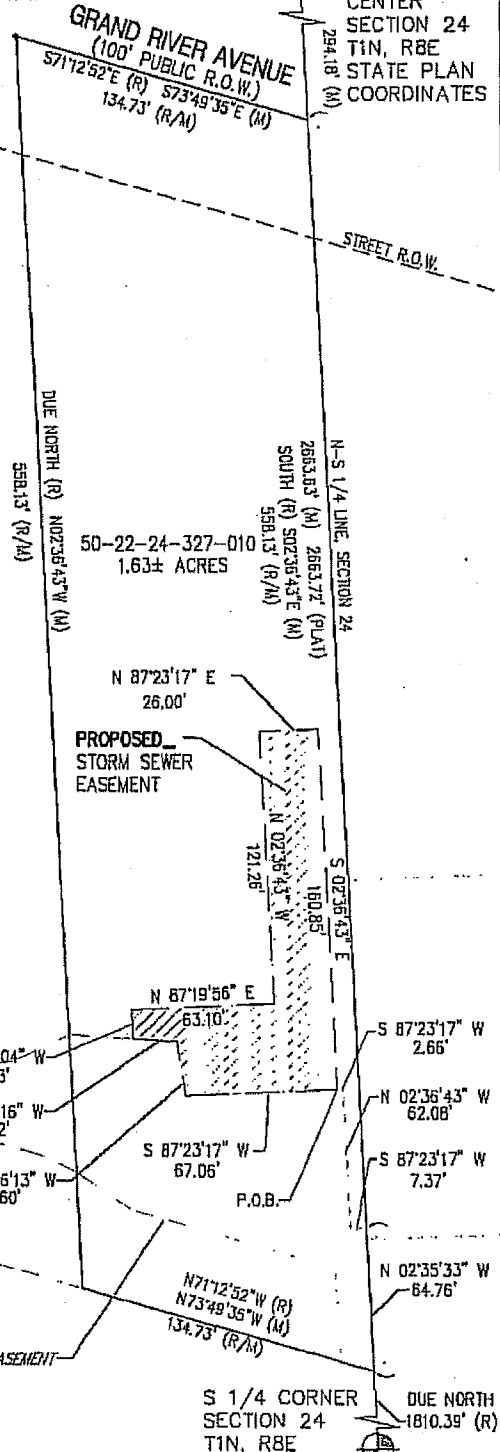
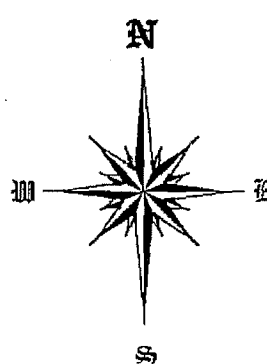
ISSUED FOR:	REV'D BY:	ISSUED FOR:	REV'D BY:
		Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 2031 COOLIDGE HIGHWAY FROY, MI 48098 PHONE: 248.885-8431 FAX: 248.885-8432 EMAIL: SUJAK.ENGINEERING@COMCAST.NET	
DRAWN BY: TCS JOB No. 10-014 DATE: 10-06-10 SHEET No. 1 SCALE 1"=60'		PROJECT: KROGER OFFICE PHASE II DESCRIPTION: EASEMENT FOR INGRESS/EGRESS	

EXHIBIT D

CENTER SECTION 24
T1N, R8E
STATE PLAN
COORDINATES

LEGAL DESCRIPTION - STORM WATER MANAGEMENT EASEMENT
A STORM SEWER MANAGEMENT EASEMENT LOCATED IN THE CITY OF NOVI, COUNTY OF OAKLAND, STATE OF MICHIGAN, AND IS DESCRIBED AS FOLLOWS:

PART OF THE SOUTHWEST 1/4 OF SECTION 24, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT A POINT ON THE NORTH AND SOUTH 1/4 LINE OF SECTION 24, DISTANT N. 02°36'43" W. 1810.39 FEET AND NORTH 2 DEGREES 35 MINUTES 33 SECONDS WEST 64.76 FEET ALONG AN EXISTING EASEMENT AND SOUTH 87 DEGREES 23 MINUTES AND 17 SECONDS WEST 7.37 FEET AND NORTH 2 DEGREES 36 MINUTES 43 SECONDS WEST 62.08 FEET AND SOUTH 87 DEGREES 23 MINUTES 17 SECONDS WEST 2.66 FEET TO THE POINT OF BEGINNING OF PROPOSED EASEMENT; THENCE SOUTH 87 DEGREES 23 MINUTES 17 SECONDS WEST 67.06 FEET; THENCE NORTH 8 DEGREES 56 MINUTES 13 SECONDS WEST 24.60 FEET; THENCE NORTH 86 DEGREES 34 MINUTES 16 SECONDS WEST 19.42 FEET; THENCE NORTH 2 DEGREES 40 MINUTES 04 SECONDS WEST 13.03 FEET; THENCE NORTH 87 DEGREES 19 MINUTES 56 SECONDS EAST 63.10 FEET; THENCE NORTH 2 DEGREES 36 MINUTES 43 SECONDS EAST 160.85 FEET TO THE POINT OF BEGINNING.



ISSUED FOR:	REV'D BY:	ISSUED FOR:	REV'D BY:
Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 3031 COOLIDGE HIGHWAY FLOY, MI 48030 PHONE: 248.885-8431 FAX: 248.885-8432 EMAIL: SUJAKENGINEERING@COMCAST.NET			
PROJECT: KROGER OFFICE PHASE II		DESCRIPTION STORM WATER MANAGEMENT AGREEMENT	
DRAWN BY: GH	JOB No.: 10-014	DATE: 10-03-10 SHEET No.: 1 SCALE: 1"=60'	

