

CITY of NOVI CITY COUNCIL

**Agenda Item S
September 28, 2009**

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Sunshine Express Novi Properties, LLC, for the Sunshine Market (aka Sharrak Gas & Convenience Center) located at 42355 Thirteen Mile Road on the southeast corner Thirteen Mile Road and Novi Road in Section 11 (parcel 22-11-200-017).

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

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

BACKGROUND INFORMATION:

The Sunshine Express Novi Properties, LLC has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Sunshine Market (aka Sharrak Gas & Convenience Center) site, located at 42355 Thirteen Mile Road (on the southeast corner of Thirteen Mile Road and Novi Road), Section 11 of the City of Novi. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's September 11, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Sunshine Express Novi Properties, LLC for the Sunshine Market (aka Sharrak Gas & Convenience Center) located at 42355 Thirteen Mile Road on the southeast corner of Thirteen Mile Road and Novi Road in Section 11 (parcel 22-11-200-017).

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

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

September 11, 2009

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

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

Rob Hayes, Public Services Director
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

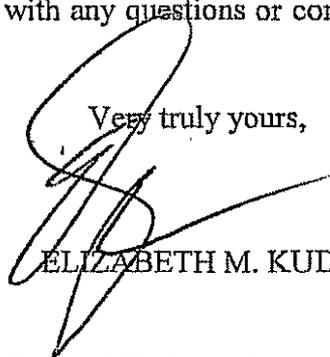
Re: **Sunshine Market (Sharrak Gas & Convenience Center) – SP07-73**
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660004.NOVI

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for Sunshine Market in Section 11 of the City. The City's Consulting Engineer has approved the attached exhibits. The Agreement appears to be in order and may be placed on an upcoming City Council Agenda for approval. 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/Original 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)
Taylor Reynolds and Byron Hanson, Spalding DeDecker (w/Enclosure)
Ted Meadows, Spalding DeDecker (w/Enclosure)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 19 day of August, 2009, by and between Sunshine Express Novi Properties, LLC, a Michigan limited liability company, whose address is 27041 Southfield Road, #201, Lathrup Village, MI 48076 (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 11 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 Retail development on the Property.
- B. The Commercial Retail Development, shall contain certain storm drainage, detention and/or retention facilities, including but not limited to, catch basins, a detention 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, catch basin, and detention 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 Agreement as of the day and year first above set forth.

{Signatures Begin on Following Page}

Oakland County, Michigan
My Commission Expires: _____

CONSENT TO EASEMENT

As the holder of a mortgagee interest in and to the property referenced in the Storm Drainage Facility Maintenance Easement Agreement, dated _____, 20____, attached hereto and incorporated as Exhibit A, whereby Sunshine Express Novi Properties, LLC, enters into such easement agreement with the City of Novi, the undersigned hereby evidences its consent to the grant, conveyance, existence and recordation of said easement agreement, which easement agreement is hereby acknowledged and agreed to be superior to the interest of the undersigned and shall bind the undersigned and the heirs, successors and assigns of the undersigned.

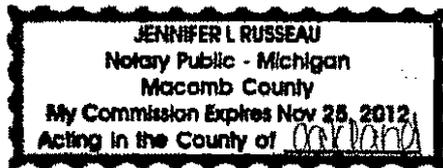
IN WITNESS WHEREOF the undersigned has caused its signature to be placed on the 5 day of August, 2011.

Citizens Bank
By: [Signature]
(Print Name: Joseph Carroll)
Its: Vice President

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

The foregoing Consent to Easement was acknowledged before me this 5 day of August, 2011 by Joseph Carroll, the Vice President of Citizens Bank, a Michigan Corporation.

[Signature]
Notary Public
Macomb County, MI
My commission expires: 11/25/2012



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
C:\NrPortb\lmanage\BKUDLA\127224I_1.DOC

Exhibit A

Legal Description per First American Title Co., Commitment # K10464

A parcel of land located in and being a part of the Northeast 1/4 of Section 11, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, being more particularly described as:

Commencing at the North 1/4 corner of said Section 11; thence North 86 degrees 26 minutes 25 seconds East 115.01 feet (recorded as North 86 degrees 25 minutes 42 seconds East 115.02 feet) along the North line of said Section 11 and the centerline of Thirteen Mile Road (variable width) to the point of beginning; thence continuing North 86 degrees 26 minutes 25 seconds (recorded as 42 seconds) East 220.32 feet along the North line of said Section 11; thence South 01 degrees 50 minutes 24 seconds East 315.29 feet; thence North 89 degrees 57 minutes 59 seconds West 222.56 feet; thence along the Easterly Right of Way line of Novi (Decker Road (120 feet wide), 79.97 feet along the arc of a 510.00 foot radius circular curve to the left, with a central angle of 08 degrees 59 minutes 05 seconds and a chord bearing North 01 degrees 53 minutes 08 seconds East 79.89 feet; thence North 02 degrees 36 minutes 24 second West 221.70 feet to the point of beginning.

Exhibit B
Long-Term Maintenance Plan
for Storm Water Management
Sunshine Market
Page 1 of 2

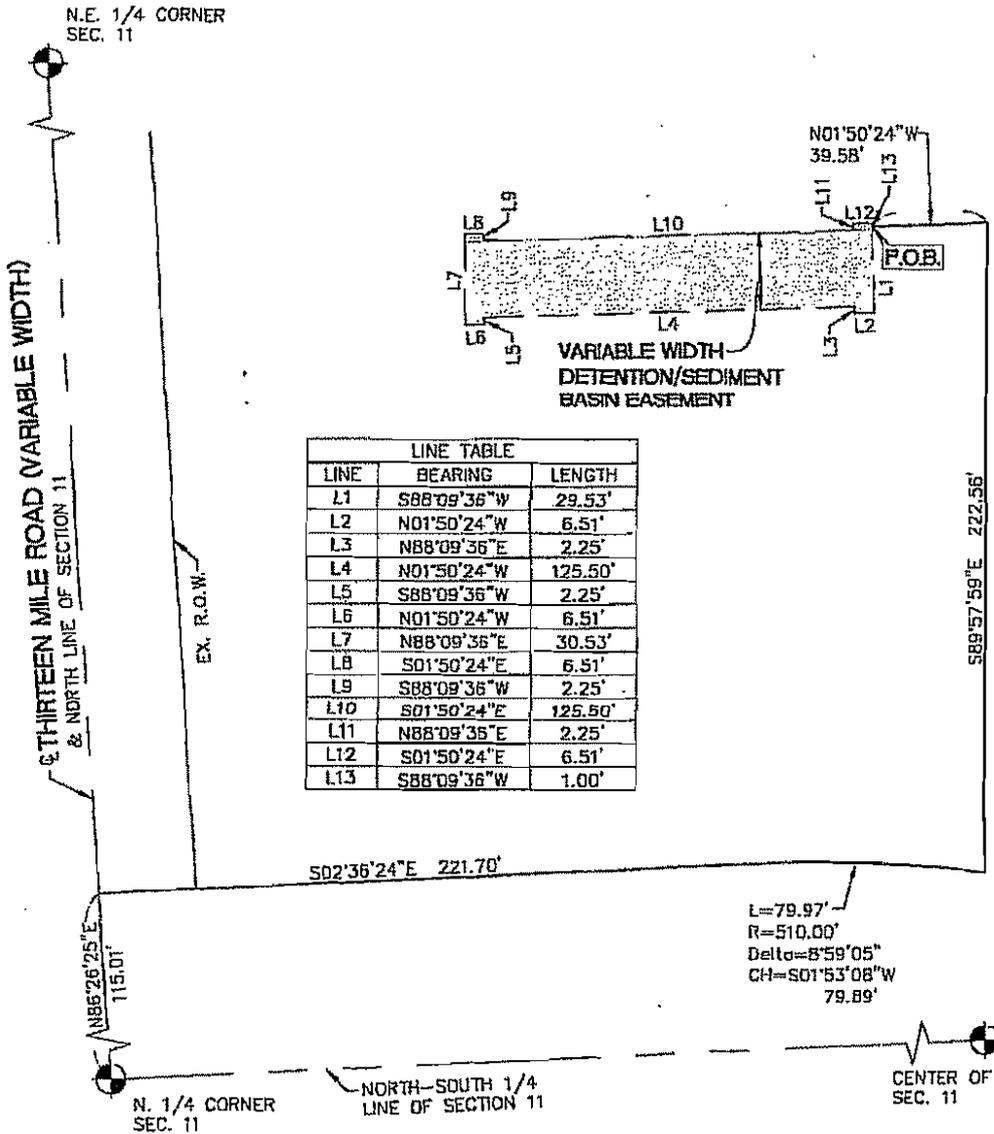
Tasks - Annual	Components	Annual Cost
Inspect for sediment accumulation	Storm Sewer System Catch Basin Sumps Outflow Control Structures Wetlands Mechanical Structures	\$200.00
Inspect for floatables and debris Cleaning of floatables and debris	Storm Sewer System Catch Basin Sumps Catch Basin Inlet Castings Channels Outflow Control Structures Storm Detention Areas Wetlands Emergency Overflow	\$175.00 \$200.00
Inspect for erosion	Channels Outflow Control Structures Rip-Rap Storm Detention Areas Wetlands Emergency Overflow	\$175.00
Inspect structural elements during wet weather and compare as-built plans (by a professional engineer reporting to the condominium association)	Outflow Control Structures	\$325.00
Keep records of all inspections and maintenance activities and report to condominium association	Storm Sewer System Channels Outflow Control Structures Rip-Rap Storm Detention Areas Wetlands Emergency Overflow	
Keep records of all costs for inspections, maintenance and repairs. Report to condominium association. Condominium Association reviews cost effectiveness of the preventative maintenance program and makes necessary adjustments	Storm Sewer System Catch Basin Sumps Catch Basin Inlet Castings Channels Outflow Control Structures Rip-Rap Storm Detention Areas Wetlands Emergency Overflow	

Exhibit B
Long-Term Maintenance Plan
for Storm Water Management
Sunshine Market
Page 2 of 2

Tasks – Every 3 – 5 Years As Needed	Components	Estimated Cost
Replacement of gravel jackets	Outflow Control Structures	\$325.00

Tasks – Every 5 – 10 Years As Needed	Components	Estimated Cost
Removal of sediment accumulation	Storm Sewer System	\$1,000.00
	Catch Basin Sumps	\$1,000.00
	Outflow Control Structures	
	Storm Detention Areas	
	Wetlands	
	Mechanical Structures	

Tasks – As Needed	Components	Estimated Cost
Re-establish permanent vegetation on eroded slopes	Channels Storm Detention Areas Wetlands Emergency Overflow	\$425.00
Make adjustments or replacements as determined by wet weather inspection(s)	Storm Sewer System Channels Outflow Control Structures Rip-Rap Storm Detention Areas Wetlands Emergency Overflow	\$425.00
Condominium association to have a professional engineer carry out emergency inspections upon identification of severe problems	Storm Sewer System Catch Basin Sumps Catch Basin Inlet Castings Channels Outflow Control Structures Rip-Rap Storm Detention Areas Wetlands Emergency Overflow	\$425.00



LINE TABLE		
LINE	BEARING	LENGTH
L1	S88°09'36"W	29.53'
L2	N01°50'24"W	6.51'
L3	N88°09'36"E	2.25'
L4	N01°50'24"W	125.50'
L5	S88°09'36"W	2.25'
L6	N01°50'24"W	6.51'
L7	N88°09'36"E	30.53'
L8	S01°50'24"E	6.51'
L9	S88°09'36"W	2.25'
L10	S01°50'24"E	125.50'
L11	N88°09'36"E	2.25'
L12	S01°50'24"E	6.51'
L13	S88°09'36"W	1.00'

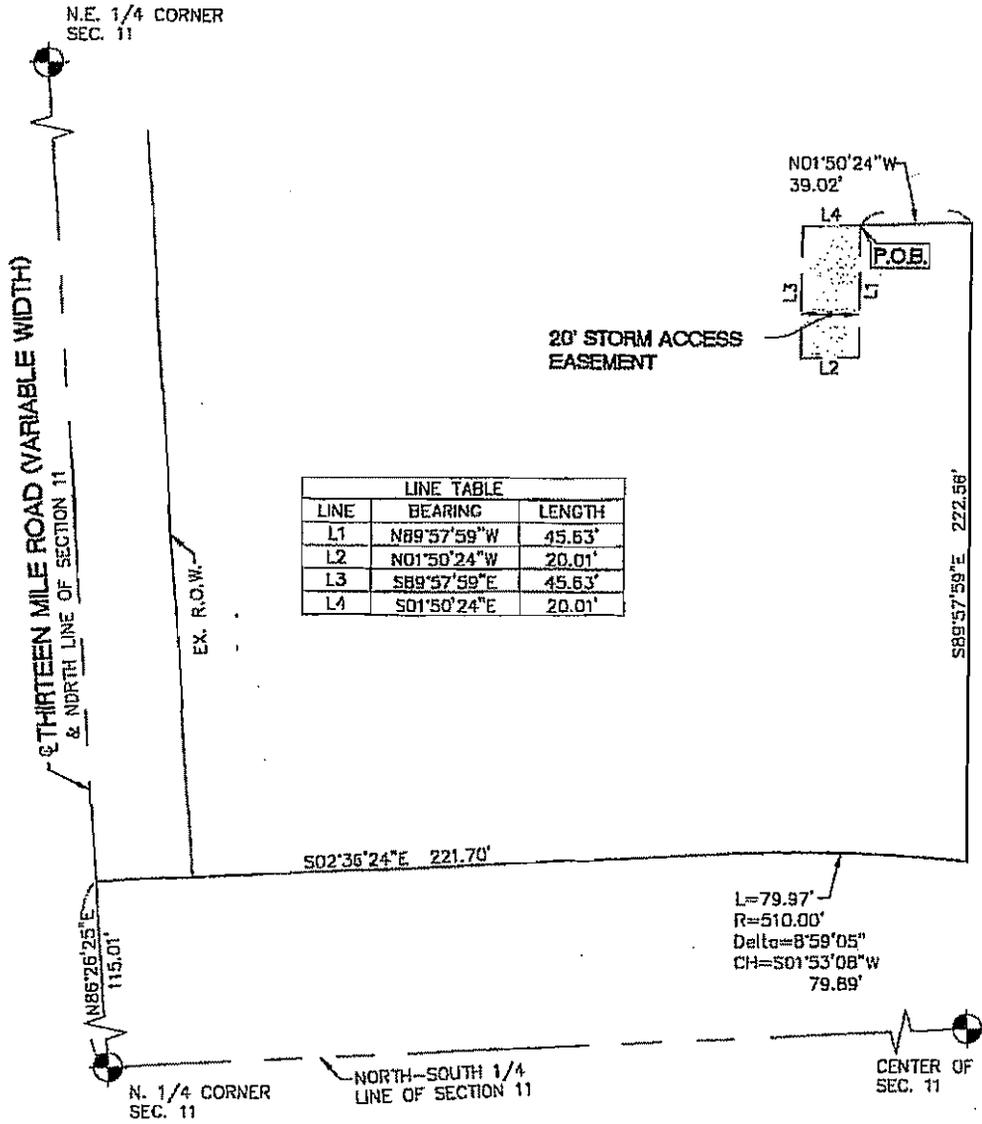
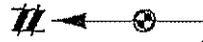
LEGEND	
	SECTION CORNER
	P.O.B. PLACE OF BEGINNING
	R.O.W. RIGHT-OF-WAY
	CENTERLINE

CLIENT SHARRAK CONVENIENCE SERVICES SKETCH AND DESCRIPTION OF A VARIABLE WIDTH DETENTION/SEDIMENT BASIN EASEMENT LOCATED IN SECTION 11 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOV OAKLAND COUNTY, MICHIGAN	JOB: 06000164 DR. DJG BOOK SHEET 1 OF 2 FILE CODE: EA-D-01	CAD 06000164EA-06 CH. DLN PG. DATE: 06/08/09
	 ATWELL-HICKS www.atwell-hicks.com 800.830.4200	
	ARIZONA ARKANSAS FLORIDA ILLINOIS INDIANA OHIO PENNSYLVANIA TENNESSEE Engineering Surveying Environmental Ecological Planning Water Resources	
	SCALE: 1 INCH = 50 FEET 	

LEGAL DESCRIPTION OF A VARIABLE WIDTH DETENTION/SEDIMENT BASIN EASEMENT

Commencing at the North 1/4 corner of Section 11, T1N, R8E, City of Novi, Oakland County, Michigan; thence N86°26'25"E 115.01 feet along the North line of said Section 11 and the centerline of Thirteen Mile Road (Variable Width); thence S02°36'24"E 221.70 feet; thence 79.97 feet along the arc of a 510.00 foot radius circular curve to the right, with a central angle of 8°59'05", having a chord which bears S01°53'08"W 79.89 feet; thence S89°57'59"E 222.56 feet; thence N01°50'24"W 39.58 feet for a PLACE OF BEGINNING; thence S88°09'36"W 29.53 feet; thence N01°50'24"W 6.51 feet; thence N88°09'36"E 2.25 feet; thence N01°50'24"W 125.50 feet; thence S88°09'36"W 2.25 feet; thence N01°50'24"W 6.51 feet; thence N88°09'36"E 30.53 feet; thence S01°50'24"E 6.51 feet; thence S88°09'36"W 2.25 feet; thence S01°50'24"E 125.50 feet; thence N88°09'36"W 2.25 feet; thence S01°50'24"E 6.51 feet; thence S88°09'36"W 1.00 feet to the Place of Beginning, being a part of the North 1/2 of the Northeast 1/4 of said Section 31, containing 0.08 acres of land, more or less.

CLIENT SHARRAK CONVENIENCE SERVICES SKETCH AND DESCRIPTION OF A VARIABLE WIDTH DETENTION/SEDIMENT BASIN EASEMENT LOCATED IN SECTION 11 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	JOB: 06000164	CAD: 06000164EA-08
	DR: DJG	CR: DLN
	BOOK:	PG:
	SHEET 2 OF 2	DATE: 06/08/09
FILE CODE: EA-0-01		
 www.atwell-hicks.com 888 850 4200		
ARIZONA ALABAMA FLORIDA Engineering Environmental ILLINOIS MICHIGAN OHIO Surveying Ecological PENNSYLVANIA TENNESSEE Planning Water Resources		



LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°57'59"W	45.63'
L2	N01°50'24"W	20.01'
L3	S89°57'59"E	45.63'
L4	S01°50'24"E	20.01'

LEGEND	
	SECTION CORNER
	PLACE OF BEGINNING
	RIGHT-OF-WAY
	CENTERLINE

CLIENT SHARRAK CONVENIENCE SERVICES SKETCH AND DESCRIPTION OF A 20 FOOT WIDE STORM ACCESS EASEMENT LOCATED IN SECTION 11 TOWN 1 NORTH, RANGE B EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	JOB: 06000164 DR: DJG BOOK:	EAD: 06000164EA-04 CH: DLN PE:
	SHEET 1 OF 2 FILE CODE: EA-0-01	DATE: 06/08/09
	ATWELL-HICKS www.atwell-hicks.com 800.850.4200	
	ARIZONA ARKANSAS FLORIDA ILLINOIS MICHIGAN OHIO PENNSYLVANIA TENNESSEE	Engineering Environmental Surveying Ecological Planning Water Resources
SCALE: 1 INCH = 50 FEET	0 25 50 	

LEGAL DESCRIPTION OF A 20 FOOT WIDE STORM ACCESS EASEMENT

Commencing at the North 1/4 corner of Section 11, T1N, R8E, City of Novi, Oakland County, Michigan; thence N86°26'25"E 115.01 feet along the North line of said Section 11 and the centerline of Thirteen Mile Road (Variable Width); thence S02°36'24"E 221.70 feet; thence 79.97 feet along the arc of a 510.00 foot radius circular curve to the right, with a central angle of 8°59'05", having a chord which bears S01°53'08"W 79.89 feet; thence S89°57'59"E 222.56 feet; thence N01°50'24"W 39.02 feet for a PLACE OF BEGINNING; thence N89°57'59"W 45.63 feet; thence N01°50'24"W 20.01 feet; thence S89°57'59"E 45.63 feet; thence S01°50'24"E 20.01 feet to the Place of Beginning, being a part of the North 1/2 of the Northeast 1/4 of said Section 31, containing 0.02 acres of land, more or less.

CLIENT SHARRAK CONVENIENCE SERVICES SKETCH AND DESCRIPTION OF A 20 FOOT WIDE STORM ACCESS EASEMENT LOCATED IN SECTION 11 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN	JOB: 06000164 DR: DJG	CAD: 06000164EA-04 CR: DLN
	BOOK:	PG:
	SHEET 2 OF 2 FILE CODE: EA-Q-01	DATE: 08/08/09
	 ATWELL-HICKS www.atwell-hicks.com 888 850 4200 ARIZONA ARKANSAS FLORIDA Engineering Environmental ILLINOIS INDIANA OHIO Surveying Ecological PENNSYLVANIA TENNESSEE Planning Water Resources	

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 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

City Of Novi



Sunshine Market



0 40 80 160 240 320
Feet

