



CITY of NOVI CITY COUNCIL

Agenda Item F
November 9, 2009

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Heritage Office Complex, LLC and the Apex Company, LLC for the Heritage Office Complex located at 23623 and 23587 Novi Road on the west-side of Novi Road, between Nine and Ten Mile Roads in Section 27 (parcel 22-27-280-001).

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

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

BACKGROUND INFORMATION:

Heritage Office Complex, LLC and the Apex Company, LLC has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Heritage Office Complex site, located at 23623 and 23587 Novi Road (on the west-side of Novi Road, between Nine and Ten Mile Roads), Section 27 of the City of Novi. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's October 14, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Heritage Office Complex, LLC and the Apex Company, LLC for the Heritage Office Complex located at 23623 and 23587 Novi Road on the west-side of Novi Road, between Nine and Ten Mile Roads in Section 27 (parcel 22-27-280-001).

	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				



October 14, 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

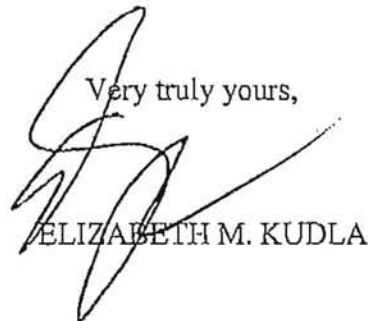
**Re: Heritage Office Complex, SP06-62
Storm Drainage Facility Maintenance Easement Agreement —
Our File No. 660129.NOVI**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for Heritage Office Complex in Section 27 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)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Mark Mahajan, Fairways Engineering (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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HERITAGE OFFICE COMPLEX
STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 15 day of February, 2008, by and between Heritage Office Complex LLC, a Michigan limited liability company, whose address is 101 N. Big Beaver Road, 10th Floor, Troy, Michigan 48084, and Apex Company, LLC, a Michigan limited liability company, whose address is 21580 Novi Road, Novi, Michigan 48375 (hereinafter collectively 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 27 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 two building office development on the Property.

B. The Heritage Office Complex 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 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 the Owner, its successors, assigns and transferees.

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

OWNER:

HERITAGE OFFICE COMPLEX LLC

By: _____

Arvind Gulati

Its: Member

APEX COMPANY, LLC

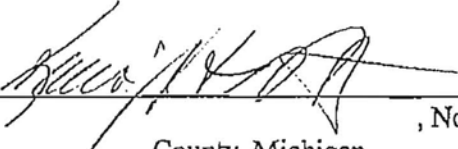
By: _____

Robert M. Rybicki

Its: Member

STATE OF MICHIGAN, COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me on this 3 day of March, 2008, by **Arvind Gulati**, Member, on behalf of Heritage Office Complex LLC, a Michigan limited liability company, by authority of its Operating Agreement.

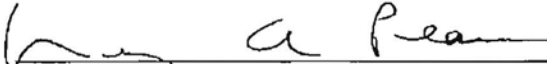


, Notary Public
County, Michigan
Acting in Oakland County
My commission expires:

KARIN C. STOMBAUGH
Notary Public, Wayne County, MI
Acting In Oakland Co., MI
My Commission Expires 07/29/2008

STATE OF MICHIGAN, COUNTY OF ~~OAKLAND~~ ^{WASHTENAW}

The foregoing instrument was acknowledged before me on this 5th day of March, 2008, by **Robert M. Rybicki**, Member, on behalf of Apex Company, LLC, a Michigan limited liability company, by authority of its Operating Agreement.



Nancy A. Pear, Notary Public
Washtenaw County, Michigan
Acting in ~~Oakland County~~ Washtenaw County
My commission expires: 6/30/11

CITY OF NOVI,
a Michigan Municipal Corporation

By: _____
David Landry
Its: Mayor

and By: _____
Maryanne Cornelius
Its: Clerk

STATE OF MICHIGAN, COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me on this ____ day of _____, 2008, by **David Landry**, Mayor, and **Maryanne Cornelis**, Clerk, on behalf of the City of Novi, a Michigan Municipal Corporation.

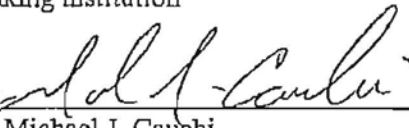
_____, Notary Public
County, Michigan
Acting in Oakland County
My commission expires:

**CONSENT TO STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT**

As the holder of a mortgagee interest in and to the property referenced in the Storm Drainage Facility Maintenance Easement Agreement, dated February 15, 2008, appearing hereinabove, and incorporated herein by reference, whereby Heritage Office Complex LLC, a Michigan limited liability company, f/k/a Novi Oaks Professional Building LLC, grants and conveys said easement to the City of Novi, a Michigan municipal corporation, the undersigned hereby evidences its consent to the grant, conveyance, existence and recordation of said easement, which easement is hereby acknowledged and agreed to be superior to the interest of the undersigned, as evidenced by a mortgage dated May 8, 2006, and recorded on May 12, 2006, in Liber 37558, Page 332, and by a mortgage dated May 8, 2006, and recorded on May 12, 2006, in Liber 37558, Page 405, Oakland County Records, and shall bind the undersigned and the successors and assigns of the undersigned. Notwithstanding the foregoing, no breach of this document shall defeat, render invalid, diminish or impair the lien of the mortgages.

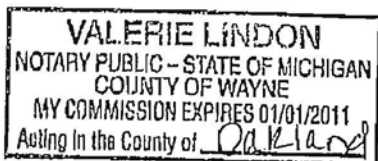
IN WITNESS WHEREOF the undersigned has caused its signature to be placed on the 15 day of February, 2008.

FIFTH THIRD BANK, a Michigan
banking institution

By: 
Michael J. Cauchi
Its: Vice President

STATE OF MICHIGAN, COUNTY OF OAKLAND

The foregoing Consent to Easement was acknowledged before me this 15 day of February, 2008, by Michael J. Cauchi, a Vice President of Fifth Third Bank, a Michigan banking institution.



Valerie Lindon
_____, Notary Public
County, Michigan
Acting in Oakland County
My commission expires:

Tax Parcel #: 22-27-200-014, -040 and -041

Recording fee: \$41.00

THIS INSTRUMENT DRAFTED BY:

Karl R. Frankena (P13641)
Conlin, McKenney & Philbrick, P.C.
350 S. Main Street, Suite 400
Ann Arbor, Michigan 48104-2131
734-761-9000

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

EXHIBIT A

THE PROPERTY

Part of the Northeast 1/4 of Section 27, T1N-R8E, City of Novi, Oakland County, Michigan, more particularly described as follows: Commencing at the East 1/4 Corner of said Section 27; thence along the East line of said Section 27 and the centerline of Novi Road (60 foot wide 1/2 Right of Way), N 00°06'48" W, 851.40 feet to the POINT OF BEGINNING of the parcel to be described; thence along the North line of "ARROWON PINES CONDOMINIUM" as recorded in Oakland County Condominium Subdivision Plan No. 771, S 89°59'26" W, 331.22 feet; thence along the East line of said Condominium, N 00°06'48" W, 131.52 feet; thence continuing along North line of said Condominium, S 89°59'26" W, 168.78 feet; thence continuing along the East line of said Condominium, N 00°06'48" W, 164.50 feet; thence N 89°59'26" E, 500.00 feet; thence along the East line of said Section 27 and the centerline of said Novi Road, S 00°06'48" E, 296.03 feet to the POINT OF BEGINNING, containing 2.89 acres, more or less and subject to the rights of the public over Novi Road. Also subject to any other easements or restrictions of record.

STORM WATER MAINTENANCE ACTIVITIES AND BUDGET

EXHIBIT B

STORMWATER MAINTENANCE ACTIVITIES AND BUDGETS - EXHIBIT "B"														
PERMANENT MAINTENANCE TASKS AND SCHEDULE COMPONENTS														
NO.	TASKS	STORM SEWER	ESTIMATED	CATCH BASIN	ESTIMATED	CATCH BASIN	ESTIMATED	CHANNELS AND	ESTIMATED	UNDERGROUND BASIN	ESTIMATED	OUTFLOW	ESTIMATED	SCHEDULE
		SYSTEM	COST	DUMPS	COST	INLET	COST	DRALES	COST	& PRETREATMENT	COST	CONTROL	COST	
			(1 YR.)		(1 YR.)	CATCH BASIN			(1 YR.)		(1 YR.)	STRUCTURE	(1 YR.)	
1	INSPECTION FOR SEDIMENT ACCUMULATION													
	DETECTION BASIN									X	\$200.00			ANNUALLY
	SEWER STRUCTURES									X	\$125.00			QUARTERLY
	OTHER	X	\$100.00	X	\$100.00		X	\$100.00				X	\$100.00	ANNUALLY
2	REMOVAL OF SEDIMENT ACCUMULATION													
	DETECTION BASIN									X	\$1000.00			MAINTAIN AT 80% FULL
	SEWER STRUCTURES									X	\$400.00			QUARTERLY, AS NEEDED
	OTHER	X	\$100.00	X	\$100.00		X	\$100.00				X	\$100.00	MAINTAIN AS NEEDED
3	INSPECT FOR FLOATABLES AND DEBRIS			X	\$100.00	X	\$100.00	X	\$100.00	X	\$100.00	X	\$100.00	ANNUALLY
4	CLEANING OF FLOATABLES AND DEBRIS			X	\$100.00	X	\$100.00	X	\$100.00	X	\$100.00	X	\$100.00	ANNUALLY
5	INSPECTION FOR EROSION							X	\$100.00	X	\$100.00			ANNUALLY
6	DETERMINED PERMANENT VEGETATION							X	\$100.00	X	\$100.00		\$100.00	AS NEEDED
7	REPLACEMENT OF STONE							X	\$100.00				\$100.00	AS NEEDED
8	INSPECT FOR AND OF GUTTERS											X	\$100.00	QUARTERLY
9	WET WEATHER INSPECTION OF STRUCTURAL	X	\$200.00					X	\$200.00	X	\$200.00	X	\$200.00	ANNUALLY
	ELEMENTS (INCLUDING INSPECTION FOR SEDIMENT													
	ACCUMULATION IN DETENTION BASINS) WITH													
	AS-BUILT PLANS IN HAND, THESE SHOULD BE													
	CARRIED OUT BY A PROFESSIONAL ENGINEER													
10	MAKE ADJUSTMENTS OR REPLACEMENTS AS	X	\$200.00					X	\$200.00			X	\$200.00	AS NEEDED
	DETERMINED BY WET WEATHER INSPECTION													
11	KEEP RECORDS OF ALL INSPECTIONS AND												\$100.00	PER INSPECTION
	MAINTENANCE ACTIVITIES AND SHALL BE MADE													
	AVAILABLE FOR CITY INSPECTION													
12	KEEP RECORDS OF ALL COSTS FOR INSPECTIONS,													PER ACTIVITY
	MAINTENANCE AND REPAIRS AND SHALL BE													
	MADE AVAILABLE FOR CITY REVIEW													
	TOTAL		\$200.00		\$400.00		\$200.00		\$1,000.00		\$1,000.00		\$2,000.00	\$1,000.00

EXHIBIT C

INGRESS/EGRESS EASEMENT AREA

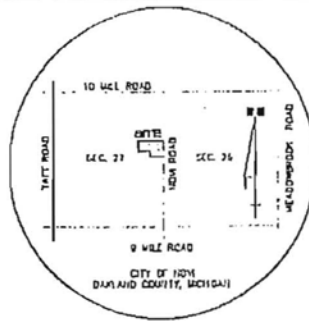
Part of the Northeast 1/4 of Section 27, T1N-R8E, City of Novi, Oakland County, Michigan, more particularly described as follows: Commencing at the East 1/4 Corner of said Section 27; thence along the East line of said Section 27 and the centerline of Novi Road (60 foot wide 1/2 Right of Way), N 00°06'48" W, 851.40 feet; thence along the North line of "ARROWON PINES CONDOMINIUM" as recorded in Oakland County Condominium Subdivision Plan No. 771, S89°59'26"W, 60.00 feet; thence N00°06'48"W, 144.28 feet to the Point of Beginning of a 24 foot wide ingress and egress easement; thence S89°50'23"W, 264.88 feet; thence N00°09'37"W, 121.45 feet; thence N89°59'26"E, 24.00 feet; thence S00°09'37"E, 97.38 feet; thence N89°50'23"E, 240.90 feet; thence S00°06'48"E, 24.00 feet to the Point of Beginning (as set forth on the attached survey).

EXHIBIT D

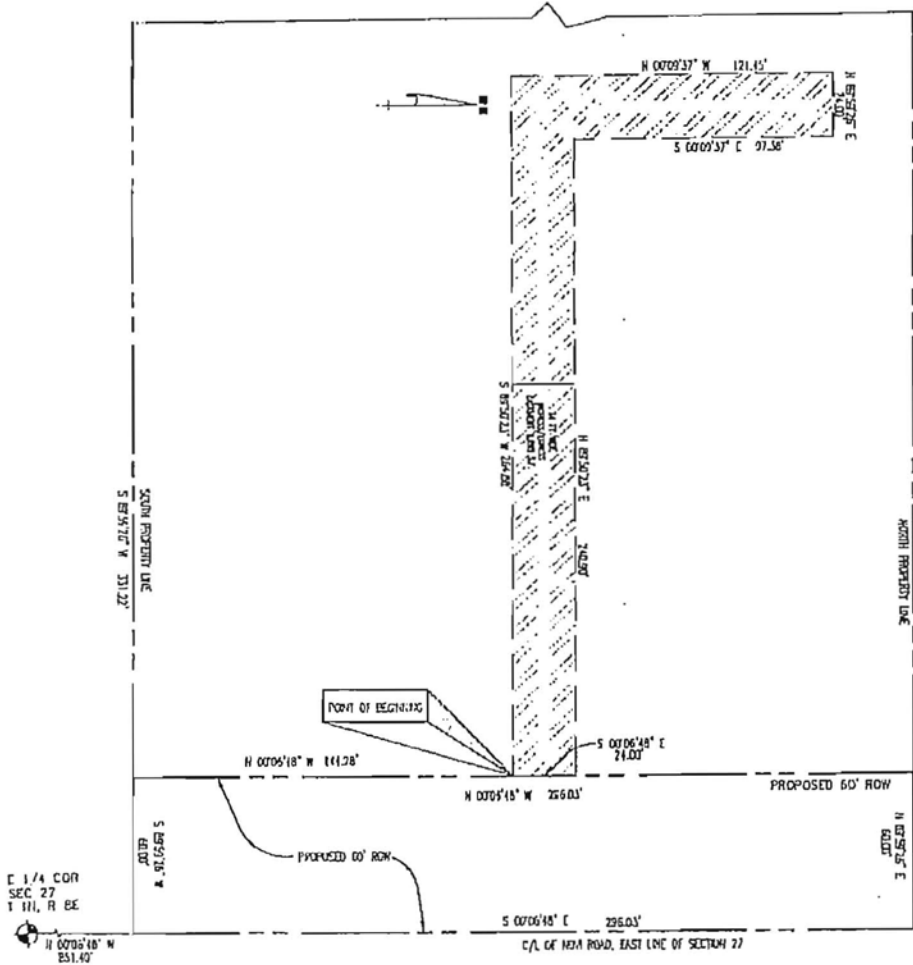
DETENTION/SEDIMENTATION BASIN EASEMENT AREA

Part of the Northeast 1/4 of Section 27, T1N-R8E, City of Novi, Oakland County, Michigan, more particularly described as follows: Commencing at the East 1/4 Corner of said Section 27; thence along the East line of said Section 27 and the centerline of Novi Road (60 foot wide 1/2 Right of Way), N 00°06'48" W, 851.40 feet; thence along the North line of "ARROWON PINES CONDOMINIUM" as recorded in Oakland County Condominium Subdivision Plan No. 771, S89°59'26"W, 60.00 feet; thence N00°06'48"W, 168.28 feet; thence S89°50'23"W, 161.74 feet to the Point of Beginning of a storm water detention easement; thence S00°09'37"E, 39.64 feet; thence S89°45'19"W, 96.68 feet; thence N00°14'41"W, 22.81 feet; thence S89°45'19"W, 24.63 feet; thence N00°14'41"W, 104.83 feet; thence N89°30'20"E, 108.41 feet; thence S00°13'05"E, 55.03 feet; thence S89°41'42"W, 63.63 feet; thence S00°14'41"E, 33.26 feet; thence N89°50'23"E, 76.62 feet to the Point of Beginning (as set forth on the attached survey).

EXHIBIT C



LOCATION MAP
1:101 TO SCALE



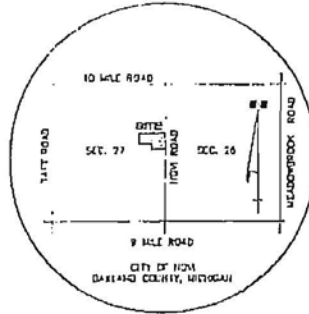
Description of Ingress and Egress Easement
 Part of the Northeast 1/4 of Section 27, T1N-R8C, City of Novi, Oakland County, Michigan, more particularly described as follows: Commencing at the East 1/4 Corner of said Section 27; thence along the East line of said Section 27 and the centerline of Novi Road (60 foot wide 1/2 Right of Way), N 00°06'48" W, 851.40 feet; thence along the North line of "ARROWON PINES CONDOMINIUM" as recorded in Oakland County Condominium Subdivision Plan No. 771, S89°59'26"W, 60.00 feet; thence N00°06'48"W, 144.28 feet to the Point of Beginning of a 24 foot wide ingress and egress easement; thence S19°50'23"W, 264.88 feet; thence N00°09'37"W, 121.45 feet; thence N09°59'26"E, 24.00 feet; thence S10°09'17"E, 97.38 feet; thence N89°50'23"E, 240.90 feet; thence S00°06'48"E, 24.00 feet to the Point of Beginning.

Bearing Reference
 Bearings were established from the recorded plat of "MYSTIC FOREST" and previously recorded deeds.

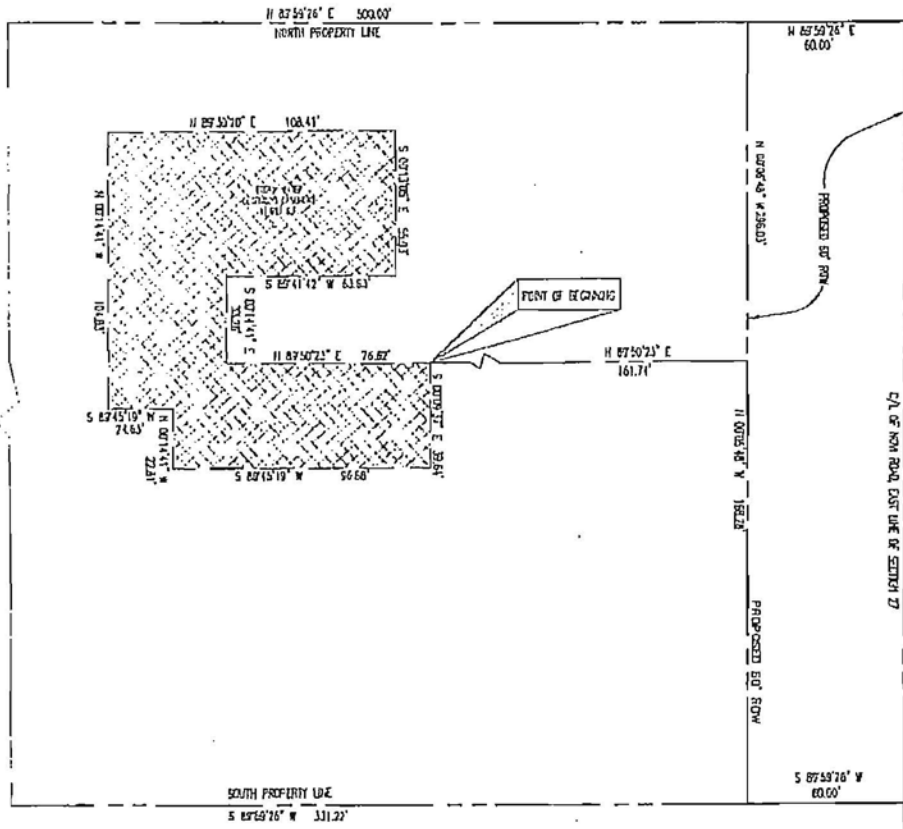


FAIRWAY ENGINEERING LLC 23065 NOVI ROAD, SUITE 140 NOVI, MI 48375 (248) 214-8813 FAX (248) 380-0201	INGRESS/EGRESS EASEMENT HERITAGE OFFICE COMPLEX CITY OF NOVI, OAKLAND COUNTY, MICHIGAN	DRAWN: NEW	DATE 10/10/07
		DESIGN: NEW	SCALE 1" = 50'
		SECTION: 27	SHEET 1 OF 1
		T-1-N-R-8-C	NO, FEB0501

EXHIBIT D



LOCATION MAP
NOT TO SCALE



Description of Storm Water Detention Easement

Part of the Northeast 1/4 of Section 27, T14N-R8E, City of Novi, Oakland County, Michigan, more particularly described as follows: Commencing at the East 1/4 Corner of said Section 27; thence along the East line of said Section 27 and the centerline of Novi Road (60 foot wide 1/2 Right of Way), N 00°06'48" W, 851.40 feet; thence along the North line of "ARROWDIN PINES CONDOMINIUM" as recorded in Oakland County Condominium Subdivision Plan No. 771, S89°59'26"W, 60.00 feet; thence N00°06'48"W, 168.28 feet; thence S89°50'23"W, 161.74 feet to the Point of Beginning of a storm water detention easement; thence S00°09'37"E, 39.64 feet; thence S89°45'19"W, 96.68 feet; thence N00°14'41"W, 22.81 feet; thence S89°45'19"W, 24.63 feet; thence N00°14'41"W, 104.83 feet; thence N89°30'20"E, 108.41 feet; thence S00°13'05"E, 55.03 feet; thence S89°41'42"W, 63.63 feet; thence S00°14'41"E, 33.26 feet; thence N89°50'23"E, 76.62 feet to the Point of Beginning.

Bearing Reference

Bearings were established from the recorded plat of "MYSTIC FOREST" and previously recorded deeds.

E 1/4 COR
SEC 27
T 14N, R 8E



FAIRWAY ENGINEERING LLC 23965 NOVI ROAD, SUITE 140 NOVI, MI 48375 (248) 214-3913 FAX (248) 380-0201	DETENTION BASIN/STORMWATER EASEMENT HERITAGE OFFICE COMPLEX CITY OF NOVI, OAKLAND COUNTY, MICHIGAN	DRAWN: WDW	DATE 10/10/07	3
		DESIGN: WDW	SCALE 1" = 50'	
		SECTION: 27	SHEET 1 OF 1	
		1-1-R-R-6-E	NO. FED7501	

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 Federal 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



Heritage Office Location Map

