



CITY of NOVI CITY COUNCIL

Agenda Item D
March 12, 2018

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Rainbow Rascals MI-Nov, LLC for the Rainbow Child Care Center project located west of Beck Road, north of Grand River Avenue (parcel 50-22-17-226-033).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The developer for Rainbow Child Care Center, Rainbow Rascals MI-Nov, LLC, requests approval of the Storm Drainage Facility Maintenance Easement Agreement for the storm water management system associated with the project.

The Storm Drainage Facility Maintenance Easement Agreement (SDFMEA) is a requirement of the Storm Water Management Ordinance and details the responsibilities of the property owner to properly maintain their privately owned on-site storm water system. The agreement also contains a provision that permits the City to perform maintenance of the privately owned on-site storm water system should the property owner fail to do so at the expense of the property owner.

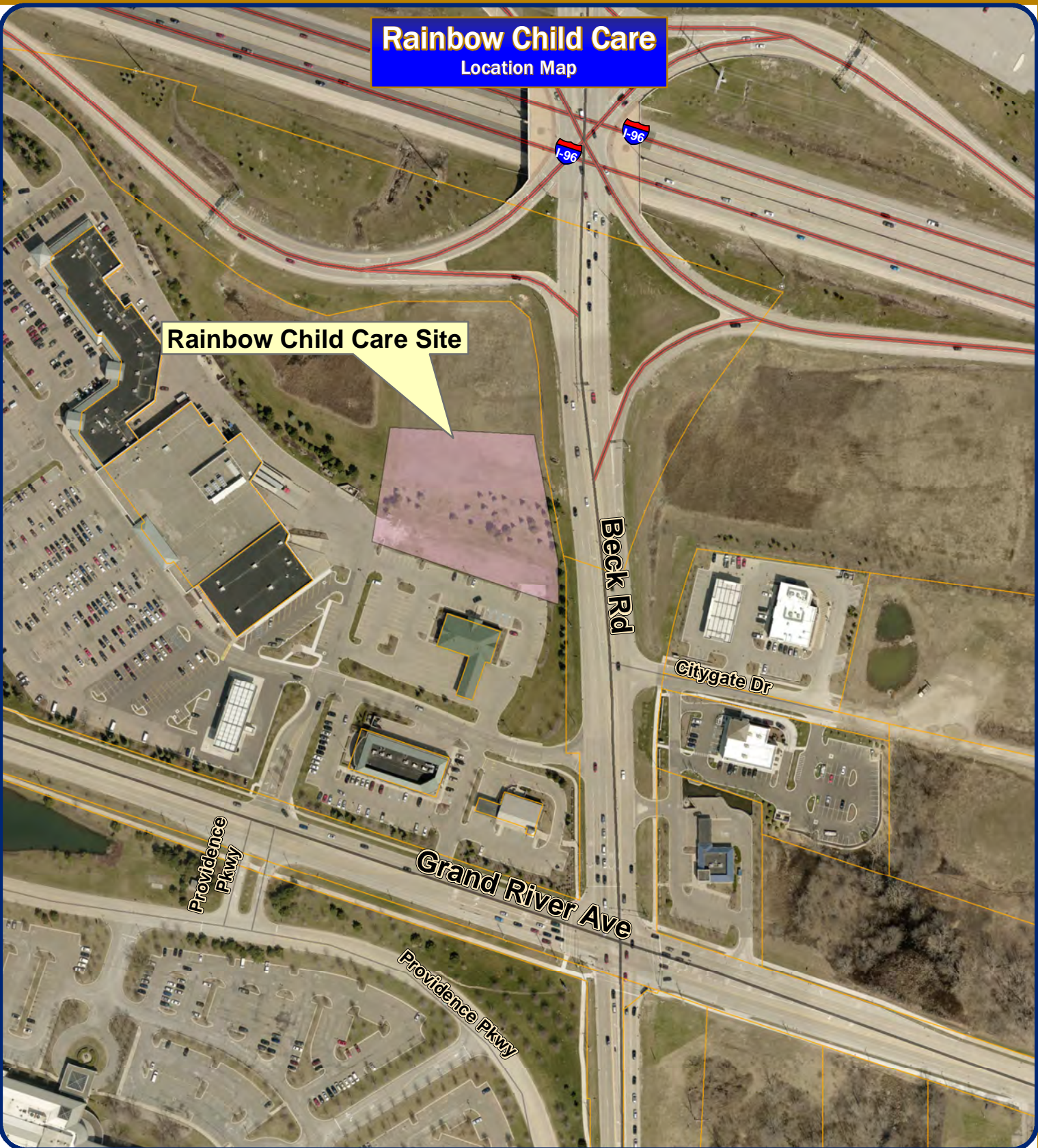
In this particular case, the property owner owns and agrees to maintain two storm water oil/gas separators and is providing the City with the appropriate ingress/egress easements. The owner is also responsible for maintaining the pipes, storm sewer structures and open channels leading to the off-site storm water management system.

The enclosed agreement has been favorably reviewed by the City Engineering consultant (Spalding DeDecker, January 30, 2018) and the City Attorney (Beth Saarela, February 16, 2018) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Rainbow Rascals MI-Nov, LLC for the Rainbow Child Care Center project located west of Beck Road, north of Grand River Avenue (parcel 50-22-17-226-033).

Rainbow Child Care

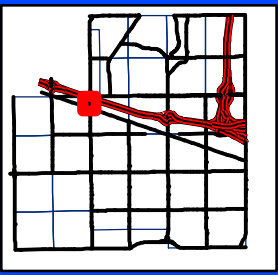
Location Map



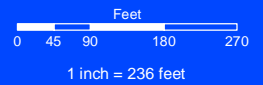
Rainbow Child Care Site

Map Author: Theresa Bridges
 Date: February 27, 2018
 Project:
 Version #:
 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 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



City of Novi
 Engineering Division
 Department of Public Services
 26300 Lee BeGole Drive
 Novi, MI 48375
cityofnovi.org





JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

February 16, 2018

Jeffrey Herczeg, Director of Public Services
CITY OF NOVI
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

Re: Rainbow Child Care JSP16-0043
Storm Drainage Facility Maintenance Easement Agreement

Dear Mr. Herczeg:

We have received and reviewed, and enclosed please find the Storm Drainage Facility Maintenance Easement Agreement for storm water drainage facilities serving the Rainbow Child Care Facility development. The Storm Drainage Facility Maintenance Easement Agreement is in the City's standard format and is acceptable as provided. The City's Consulting Engineer has reviewed and 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.

Sincerely,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth K. Saarela

Enclosures

C: Cortney Hanson, Clerk (w/Original Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, City Planner (w/Enclosures)

Jeffrey Herczeg, Director of Public Services

February 16, 2018

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Sri Komaragiri, Planner (w/Enclosures)

Hannah Smith, Planning Assistant (w/Enclosures)

Sarah Marchioni, Building Permit Coordinator (w/Enclosures)

Theresa Bridges, Construction Engineer (w/Enclosures)

George Melistas, Senior Engineering Manager (w/Enclosures)

Taylor Reynolds, and Ted Meadows, Spalding DeDecker (w/Enclosures)

Sue Troutman, City Clerk's Office (w/Enclosures)

Angie Pawlowski, Community Development Bond Coordinator (w/Enclosures)

Thomas R. Schultz, Esquire (w/Enclosures)

STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 11TH day of JANUARY, 2018, by and between RAINBOW TASCALS ~~MT-NOVI BLDG~~ a Michigan LIMITED LIABILITY COMPANY whose address is 1732 CROOKS RD, TROY, MI 48064 (hereinafter the "Owner"), and the City of Novi, its successors, assigns, or transferees, whose address is 45175 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 _ 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 COMMERCIAL development, shall contain certain storm drainage facilities, including but not limited to, an oil/gas separator structure, 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, 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 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 with respect to the oil/gas separator structure within the Easement Area described and depicted in **Exhibit C**, 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 Owner, its agents, representatives, successors, and assigns shall defend, indemnify, and hold harmless the City and the City's, elected officials, agents and employees, from any and all costs, claims, suits, actions, losses, damages, or demands, including court costs and attorneys' fees, relating in any way to or arising out of the design, construction, use, inspection, maintenance, repair, or operation (or omissions in such regard) of the storm drainage system which is the subject of this Agreement.

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 RAINBOW RASCALS/NOVI - BECKERD, a Michigan LLC.

Reed Fenton

By: Reed Fenton

Its: Member

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 11 day of January 2018 by Reed Fenton, as the Member of Rainbow Rascals mi-Novi Beckerd LLC

ERIN BOURDIC
Notary Public, State of Michigan
County of Macomb
My Commission Expires 10-12-2022
Acting in the County of Macomb

Erin Bourdic
Notary Public Erin Bourdic
Acting in Oakland County, Michigan
My Commission Expires: 10/12/22

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 _____ 201____, by _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

| | |
|---|---|
| <p>Drafted by: Elizabeth Kudla Saarela Johnson, Rosati, Schultz & Joppich, P.C.</p> | <p>And when recorded return to: Cortney Hanson, City Clerk City of Novi</p> |
|---|---|

EXHIBIT A

STORM SEWER EASEMENT LEGAL DESCRIPTION OF PARCELS

LEGAL DESCRIPTION OF PARCEL 22-17-226-034, WESTMARKET SQUARE CONDOMINIUMS

DESCRIPTION OF PROPERTY

Part of the Northeast ¼ of Section 17, Township 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as:

Commencing at the Northeast corner of said Section 17: thence South 87 degrees 47 minutes 33 seconds West, 1454.83 feet along the North line of said Section 17 to the POINT OF BEGINNING; thence South 02 degrees 12 minutes 27 seconds East, 83.00 feet; thence North 87 degrees 47 minutes 33 seconds East, 145.00 feet; thence North 02 degrees 12 minutes 27 seconds West, 23.00 feet to the southerly limited access right of way line of the Interstate-96/Beck Road interchange; thence along the southerly and westerly limited access right of way lines of said interchange the following fourteen (14) courses: (1) along a curve to the right 146.77 feet, said curve having a radius of 1860.08 feet, a central angle of 04 degrees 31 minutes 15 seconds and a chord bearing South 89 degrees 56 minutes 49 seconds East, 146.73 feet, (2) South 59 degrees 27 minutes 06 seconds East, 89.24 feet, (3) South 47 degrees 54 minutes 58 seconds East, 149.93 feet, (4) South 36 degrees 25 minutes 16 seconds East, 109.61 feet, (5) South 55 degrees 27 minutes 02 seconds East, 286.92 feet, (6) South 61 degrees 25 minutes 49 seconds East, 99.99 feet, (7) South 73 degrees 44 minutes 02 seconds East, 74.86 feet, (8) North 75 degrees 58 minutes 35 seconds East, 122.95 feet, (9) North 88 degrees 00 minutes 06 seconds East, 209.05 feet, (10) South 51 degrees 40 minutes 45 seconds East, 45.73 feet, (11) South 12 degrees 01 minutes 19 seconds East, 87.89 feet, (12) South 05 degrees 33 minutes 43 seconds East, 155.71 feet, (13) South 12 degrees 34 minutes 29 seconds East, 215.37 feet, and (14) South 02 degrees 00 minutes 50 seconds East, 255.78 feet to the westerly right of way line of Beck Road; thence along said right of way line the following three (3) courses: South 02 degrees 00 minutes 50 seconds East, 73.67 feet, (2) North 86 degrees 34 minutes 02 seconds East, 24.01 feet, and (3) South 02 degrees 00 minutes 50 seconds East, 266.16 feet to the Northerly right of way line of Grand River Avenue (120 foot right of way; thence along the said right of way line the following two (2) courses: (1) North 73 degrees 27 minutes 18 seconds West, 590.24 feet, and (2) North 73 degrees 26 minutes 47 seconds West, 1609.34 feet; thence North 16 degrees 33 minutes 01 seconds East, 315.00 feet; thence North 73 degrees 26 minutes 47 seconds West, 692.00 feet to the North-South ¼ line of said Section 17: thence North 02 degrees 46 minutes 41 seconds West, 382.13 feet along said ¼ line to the North ¼ corner of said Section 17: thence North 87 degrees 47 minutes 33 seconds East, 1269.10 feet along the North line of said Section 17 to the POINT OF BEGINNING. Said property contains 2,353,941 square feet, or 54.04 acres, more or less, and is subject to the following: the rights of the public in that Northerly portion of Grand River Avenue. That Southerly portion of 12 Mile Road for road and right of way purposes and also subject to easements, restrictions and governmental limitations.

This condominium subdivision plan is not required to contain detailed project design plans prepared by the appropriate licensed design professional. Such project design plans are filed, as part of the construction permit application. With the enforcing agency for the state construction code in the relevant governmental subdivision. The enforcing agency may be a local building department or the state department of licensing and regulatory affairs.

LEGAL DESCRIPTION OF PARCEL 22-17-226-033, RAINBOW CHILD CARE CENTER

BEING A PART OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 8 EAST OAKLAND COUNTY, MICHIGAN AND DESCRIBED AS BEING UNIT NUMBER 20, OAKLAND COUNTY CONDOMINIUM PLAN NO. 1226, WESTMARKET SQUARE, L. 50539, P. 607 AS RECORDED ON 04-10-17.


| | | | |
|---|--|--|----------------------------|
|  <p style="font-size: small;">Civil Engineers - Land Planning Land Surveying</p> | <p>Orman Engineering, LLC 5476 Vivian Lane Waterford, MI 48327 P: 248.682.6001 E: alex@ormanengineering.com</p> | Client: Rainbow Rascals MI - Novi LLC 1732 Crooks Road Troy, Michigan 48084 | |
| | | Project No.: 1110 | |
| | | Date: 01-25-2018 | Sheet: 1 of 2 |
| | | Drawn By: S.D.M. | Checked By: A.O. |
| | | Scale: N/A | |

Exhibit B

| Storm Water Facility | Maintenance Action | Corrective Action | Annual Estimated Cost for Maintenance and Repairs | | |
|---------------------------|--|--|---|----------|----------|
| | | | 1st Year | 2nd Year | 3rd Year |
| Storm Sewer/Open Channels | After each storm that meets or exceeds a 10 year storm event, check for piping around culverts or erosion adjacent to culverts. Ensure culverts are not collapsed. | Implement energy dissipation measures as necessary to prevent erosion. Remove sediment and debris from location. | \$300.00 | \$400.00 | \$500.00 |
| | After each storm that meets or exceeds a 10 year sotrm event, inspect and clean out as necessary. | Removed sediment and debris clogging sediment tank. | \$300.00 | \$400.00 | \$500.00 |
| Oil and Gas Seperators | | | | | |

EXHIBIT B

EXHIBIT C

STORM SEWER EASEMENT AS A PART OF PARCEL NO. 22-17-226-033, RAINBOW CHILD CARE CENTER

LEGAL DESCRIPTION FOR NORTHERN STORM SEWER STRUCTURE ACCESS EASEMENT

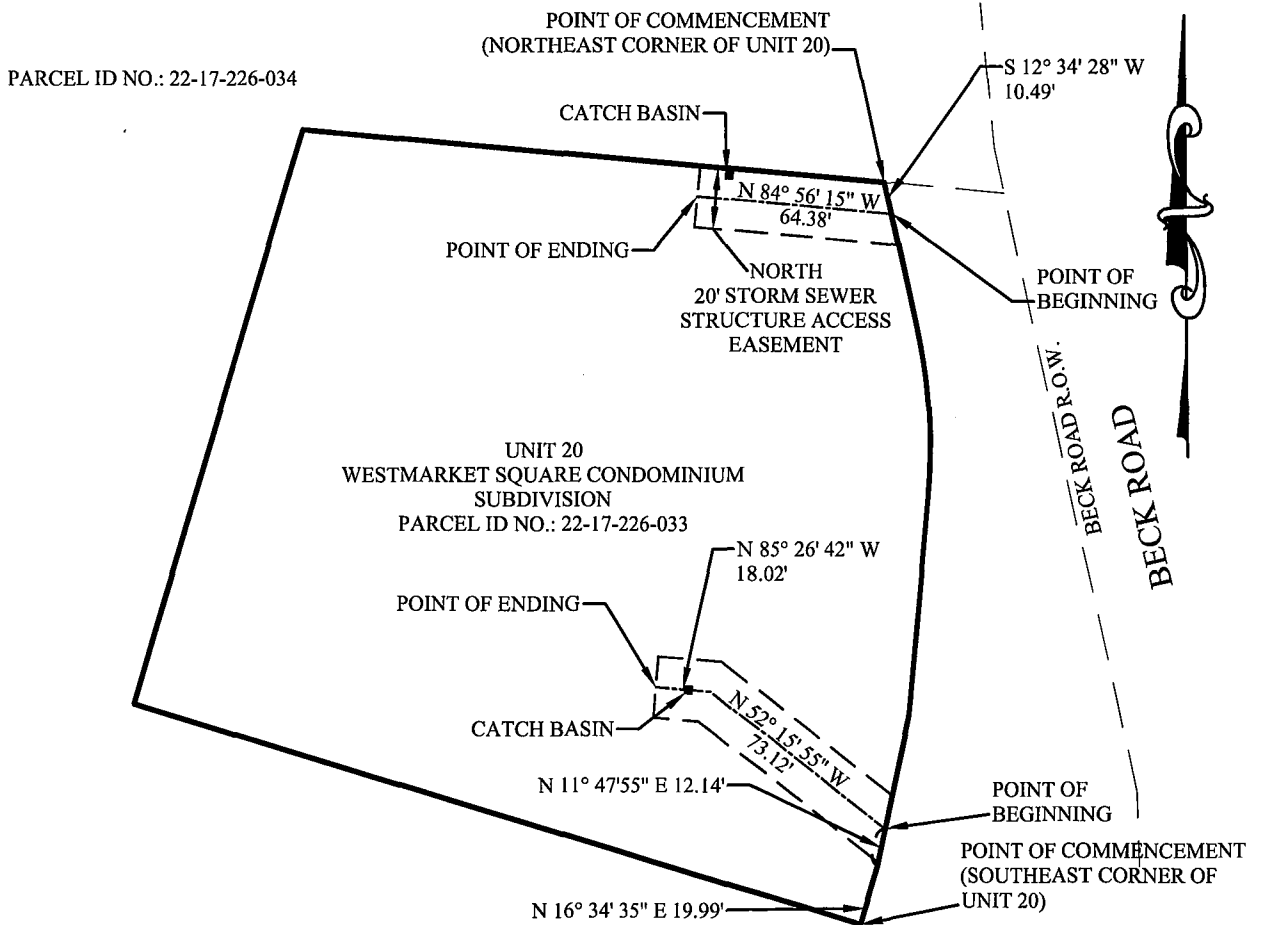
The centerline of a 20 foot wide easement being a part of Parcel No. 22-17-226-033 for the purpose of access to a structure located within parcel No. 22-17-226-033 and being more particularly described as:


Commencing at the Northeast Corner of Unit 20; thence South 12 degrees 34 minutes 28 seconds East, 10.49 feet to the Point of Beginning of this easement; thence North 84 degrees, 56 minutes, 15 seconds, 64.38 feet to the Point of Ending of this easement.

LEGAL DESCRIPTION FOR SOUTHERN STORM SEWER STRUCTURE ACCESS EASEMENT

The centerline of a 20 foot wide easement being a part of Parcel No. 22-17-226-033 for the purpose of access to a structure located within parcel No. 22-17-226-033 and being more particularly described as:

Commencing at the Southeast Corner of Unit 20; thence North 16 degrees 34 minutes 35 seconds East, 19.99 feet; thence North 11 degrees 47 minutes 55 seconds East, 12.14 feet to the Point of Beginning of this easement; thence North 52 degrees, 15 minutes, 55 seconds, 73.12 feet, thence North 85 degrees 26 minutes 42 seconds West, 18.02 feet to the Point of Ending of this easement.



| | | | | | | | |
|---|--|---|--|-------------------------------------|--|------------------------------------|--|
|  <p>Civil Engineers - Land Planning Land Surveying</p> | <p>Orman Engineering, LLC 5476 Vivian Lane Waterford, MI 48327 P: 248.682.6001 E: alex@ormanengineering.com</p> | <p>Client: Rainbow Rascals MI - Novi LLC 1732 Crooks Road Troy, Michigan 48084</p> | | <p>Project No.: 1110</p> | | | |
| | | <p>Date: 01-25-2018</p> | | <p>Sheet: 2 of 2</p> | | | |
| | | <p>Scale: 1" = 60'</p> | | <p>Drawn By: S.D.M.</p> | | <p>Checked By: A.O.</p> | |
| | | | | | | | |

January 30, 2018

Theresa Bridges, Construction Engineer
City of Novi
26300 Lee BeGole Drive
Novi, Michigan 48375

Re: Rainbow Child Care Center - Acceptance Documents Review
Novi # JSP16-0043
SDA Job No. NV17-203
EXHIBITS APPROVED

Dear Ms. Bridges:

We have reviewed the Acceptance Document Package received by our office on January 30, 2018 against the Final Site Plan (Stamping Set) approved on March 27, 2017 and against our as built field records. We offer the following comments:

Final Acceptance Documents:

The following items must be provided prior to the issuance of a Temporary Certificate of Occupancy. All documents must be completed using black ink as the County will reject them otherwise.

1. **On-Site Water System Easement** – (unexecuted: exhibit dated 10-20-2016) – Exhibits Approved
2. **Off-Site Water System Easement** – (unexecuted: exhibit dated 01-25-2018) – Exhibits Approved
3. **On-Site Storm Drainage Facility / Maintenance Easement Agreement** – (unexecuted: exhibit dated 01-25-18) – Exhibits A, B, and C Approved
4. Bill of Sale: On-Site Water Supply System – PROVIDED - APPROVED
5. Full Unconditional Waivers of Lien from contractors installing public Water Main – PROVIDED - APPROVED
6. Sworn Statement – PROVIDED – APPROVED

Unless otherwise stated above, the documents as submitted were found to be acceptable by our office pending review by the City Attorney. Legal review will not occur until a current title policy is submitted to the City. For those documents which require revisions, please forward those revised documents to the City for further review and approval.

The City Attorney's Office will retain the original documents in their files until such time as they are approved and ready (notarized and executed properly) for the Mayor's signature.

It should be noted that the Plan Review Center Report dated December 8, 2016 contains all documentation requirements necessary prior to construction and occupancy of the facility.

If you have any questions regarding this matter, please contact this office at your convenience.

Sincerely,

SPALDING DEDECKER



Mike Freckelton, EIT
Engineer

Cc (via Email): George Melistas, City Engineering Senior Manager
 Cortney Hanson, City Clerk
 Beth Saarela, Johnson Rosati, Schultz, Joppich PC
 Sarah Marchioni, City Building Project Coordinator
 Ted Meadows, Spalding DeDecker
 Taylor Reynolds, Spalding DeDecker
 Darcy Rehtien, City Construction Engineer
 Angie Pawlowski, City Community Development Bond Coordinator