

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item L
April 6, 2009

SUBJECT: Approval of the Storm Drainage Facility Maintenance Easement Agreement for the Shoppes at the Trail site, located on Parcel I.D. No. 22-04-100-038 at the southeast corner of Beck Road and Pontiac Trail.

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

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Novi Retail, LLC has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Shoppes at the Trail development, located at the southeast corner of Beck Road and Pontiac Trail, in Section 4. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's February 2, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of the Storm Drainage Facility Maintenance Easement Agreement for Shoppes at the Trail site, located on Parcel I.D. No. 22-04-100-038 at the southeast corner of Beck Road and Pontiac Trail.

| | 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 | | | | |

February 2, 2009

CITY OF NOVI
CITY CLERK'S OFFICE

2009 FEB -11 P 2:49

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

Maryanne Cornelius, City Clerk
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Shoppes at the Trail, SP03-21
Utilities Review for Acceptance
Our File No. 72236 NOV**

Dear Ms. Cornelius:

Enclosed please find the original executed documents relating to the Shoppes at the Trail Property. The documents were approved by our office pursuant to our November 14, 2008 letter to Rob Hayes, a copy of which is enclosed. The documents include the following:

1. Easement for Sanitary Sewer and Water System
2. Bill of Sale
3. Maintenance and Guarantee Bond
4. Title Policy (Parcels 038 and 039)
5. Title Policy (Parcels 037 and 040)
6. Consent to Easement (Lender)
7. Storm Drainage Facility Maintenance Easement Agreement

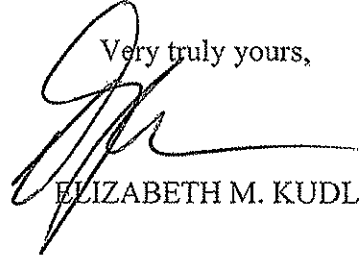
The original Sanitary Sewer and Water System Easement was recorded by Developer on May 19, 2006. A copy of the recorded easement has been enclosed for the City's file.

The "Consent to Easement" should be recorded by the City Clerk's Office with the Register of Deeds. The Storm Drainage Facility Maintenance Easement Agreement may be placed on the next available City Council Agenda for approval. Once approved and executed by the City, it should also be recorded by the City Clerk's Office with the Register of Deeds. The Bill of Sale, title commitments and Maintenance and Guarantee Bond should be retained in the City's file.

Maryanne Cornelius, City Clerk
February 2, 2009
Page 2

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 the typed name.

ELIZABETH M. KUDLA

EMK

Enclosures: Originals

C: Sue Troutman, City Clerk's Office (w/o Enclosures)
Thomas R. Schultz, Esquire (w/o Enclosures)

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STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this ____ day of _____, 200__, by and between Novi Retail, LLC, a Michigan limited liability company, whose address is 30078 Schoenherr, Suite 300, Warren, MI 48088 (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 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, 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 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

Novi Retail LLC

A Michigan Limited Liability Company

By: [Signature]
Its: Manager

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 23rd day of October, 2008, by Lorenzo J. Cavaliere, as the Manager of Novi Retail LLC

KELLY LEE DELEEUW
Notary Public, State of Michigan
County of Macomb
My Commission Expires 12-26-2011
Acting in the county of Macomb

[Signature]
Notary Public
Oakland County, Michigan
My Commission Expires: 12-26-2011

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 _____, 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

602691v1



November 14, 2008

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

Elizabeth M. Kudla
Direct: 248-539-2846
ekudla@secretswardle.com

Rob Hayes, City Engineer
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Shoppes at the Trail
Utilities Review for Acceptance
Our File No. 72236 NOV
SP03-21**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the following documents regarding the Shoppes at the Trail:

1. Easement for Sanitary Sewer and Water System
2. Bill of Sale
3. Maintenance and Guarantee Bond
4. Title Policy (Parcels 038 and 039)
5. Title Policy (Parcels 037 and 040)
6. Consent to Easement (Lender)
7. Storm Drainage Facility Maintenance Easement Agreement

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

Novi Retail, LLC seeks to convey the on-site sanitary sewer and water system facilities and corresponding easement to operate, maintain, repair and replace the facilities over, upon and through the subject property in Section 4 of the City to the City of Novi. Our office has reviewed and approves the format and language of the Easement for Sanitary Sewer and Water System and the corresponding Bill of Sale. We recommend acceptance of the easement and corresponding facilities subject to the City consulting engineer's approval of the Exhibits.

The Maintenance and Guarantee Bond is in the City's standard format for a bond secured by letter of credit. The amount of the Maintenance and Guarantee Bond has been approved by the City's consulting engineer.

The Storm Drainage Facility Maintenance Easement Agreement is in the City's standard format and is acceptable in that regard. Though Parcels 037 and 040 are included in Exhibit A, the property owner has confirmed that none of the easements in the Agreement cross these parcels; therefore, signatures from the owners of parcels 037 and 040 are not required.

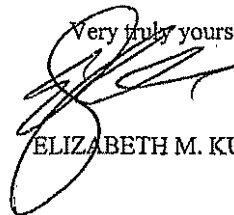
The facilities and corresponding easements should be approved and accepted by *Affidavit of the City Engineer*. The Easement for Sanitary Sewer and Water System has already been recorded by the property owner. The Bill of Sale, Maintenance and Guarantee Bond, and the Title Insurance should be maintained in the City's file.

The Storm Drainage Facility Maintenance Easement Agreement should be placed on the next available City Council Agenda for approval. Once approved and executed by the Mayor and City Clerk, it should be recorded with the Oakland County Register of Deeds.

We will forward all originals to the Clerk's office upon our receipt.

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

Very truly yours,



ELIZABETH M. KUDLA

EMK
Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)
Marina Neumaier, Assistant Finance Director (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Taylor Reynolds, Spalding DeDecker (w/Enclosures)
Barb McBeth, Community Development (w/Enclosures)
Charles Boulard, Building Department (w/Enclosures)
Tim@bouldercon.com (w/Enclosures)
Vijay Shenoy, Boulder Design (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)