

CITY of NOVI CITY COUNCIL

Agenda Item J May 6, 2019

SUBJECT: Approval of a temporary construction easement on city property known as Wildlife Woods Park for the Villas at Stonebrook residential development (parcel 50-22-17-300-016).

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

Pulte Homes of Michigan, LLC, has requested a temporary construction easement from the City to facilitate construction of a driveway and parking improvements in Wildlife Woods Park, as part of the Villas at Stonebrook residential development.

Pulte received site plan approval for the Villas at Stonebrook multi-family residential development at the October 3, 2018 Planning Commission Meeting, following City Council approval of a Planned Suburban Low-Rise (PSLR) development agreement at the August 27, 2018 Council meeting. The subject development is located east of Wixom Road, north of Eleven Mile Road.

The enclosed temporary construction easement has been favorably reviewed by the City Engineering Consultant (Spalding DeDecker, March 14, 2019) and the City Attorney (Beth Saarela, April 18, 2019) and is recommended for approval.

RECOMMENDED ACTION: Approval of a temporary construction easement on city property known as Wildlife Woods Park for the Villas at Stonebrook residential development (parcel 50-22-17-300-016).

Temporary Construction Easement to Pulte Homes of Michigan, LLC Wildlife Woods Park **Location Map** Parcel 22-17-300-013 Approximate location of temporary construction easement Parcel 22-17-300-016

Amended By: Date:





City of Novi

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

1 inch = 500 feet



ELIZABETH KUDLA SAARELA

esaarela@rsjalaw.com

27555 Executive Drive, Suite 250 Farmington Hills, Michigan 48331 P 248.489.4100 | F 248.489.1726 rsjalaw.com



April 18, 2019

Jeffrey Herczeg, Director of Public Works City of Novi Field Services Complex 26300 Lee BeGole Drive Novi, MI 48375

RE: Villas at Stonebrook JSP17-0062 Off-Site Acceptance Documents

Dear Mr. Herczeg:

We have received and reviewed the following off-site executed documents for the Villas at Stonebrook Development and have the following comments:

- Water Main Easement Providence Park (Approved)
- Easement for Underground Facilities (Water Main) ITC (Approved)
- Temporary Construction Easement (City Park) (*Approved*)
- Access Easement (Well Site Driveway) (Approved)
- Easement for Emergency Access Road ITC Corridor (Approved)
- Access Easement Providence Hospital (Approved)
- Public Access Easement (*Approved*)
- Title Search for ITC and Providence Park Property

Water Main Easement - Providence Park

1. The Water System Easement provided permits the developer to assign the easement to the City; however, the Water System Easement is not consistent with the City's standard easement terms. Applicant has acknowledged that upon completion of the construction and installation of the water main across Providence Hospital's Property that a standard form City easement will be provided by Providence Hospital for the ongoing operation and maintenance of the water main. Although this Water System Easement has been recorded by Developer, we recommend that the City does not formally accept the Water System by Affidavit until such time as the improvements are installed and the replacement easement is provided. This Easement is sufficient to grant the Developer the required access to construct its improvements. A title search for this easement will be required at the time of formal acceptance.

Jeffrey Herczeg, Director of Public Works City of Novi April 18, 2019 Page 2

2. Once the water main has been installed and has been inspected and approved by the City for acceptance, a Bill of Sale for the water main should be provided conveying it to the City for public use and maintenance. The updated standard Water System Easement format should also be provided at that time, along with a title search. In the meantime, the City should retain this original in its file.

Access Easement Providence Hospital

3. The Access Easement provided allows emergency service providers to access the Condominium site over and through the Providence Hospital Ring Road for the benefit of the Condominium. The Access Easement also permits pedestrian access. The Access Easement is a private easement for the benefit of the Condominium between Providence Hospital and the Developer. No further action by the City is required for the easement to become effective. The Easement has been recorded by the Developer.

Easement for Emergency Access Road – ITC

4. The Easement for Emergency Access Road provided allows emergency service providers to access the Condominium site over and through the ITC Corridor for the benefit of the Condominium. The Easement for Emergency Access Road also permits pedestrian access. The Easement for Emergency Access Road is a private easement for the benefit of the Condominium between ITC and the Developer. No further action by the City is required for the easement to become effective. The Easement has been recorded by the Developer.

Easement for Underground Facilities (Water Main) - ITC

5. The format and content of the Easement for Underground Facilities although inconsistent with the City's standard easement format, is consistent with any and all easement format issued by ITC, which forms it will not consent to changing. As an alternative to a standard City easement form, the Developer has added language to the Master Deed requiring the Villas at Stonebrook Homeowner's Association to take on the liability for under the ITC Easement form. We are satisfied with the alternate option since ITC is consistent with is refusal to change its easement terms, generally under any circumstance or for any entity. **Once the** facilities have been completed and inspected, the Developer will be required to assign this Easement to the City. Although this Water System Easement has been recorded by Developer, we recommend that the City does not formally accept the Water System by Affidavit until such time as the improvements are installed and the Assianment document is provided. This Easement is sufficient to grant the Developer the required access to construct its improvements.

Jeffrey Herczeg, Director of Public Works City of Novi April 18, 2019 Page 3

6. Once the water main has been installed and has been inspected and approved by the City for acceptance, a Bill of Sale for the water main should be provided conveying it to the City for public use and maintenance.

Temporary Construction Easement (City Park)

7. Pulte has requested this Easement from the City to allow Pulte to construct driveway and parking improvements in the existing City Park in accordance with the PSLR Overlay Agreement. The Temporary Construction Easement has been revised to require the developer to include the City on the Developer's policy of General Liability and Auto Insurance as an additional insured, and to indemnify the City for the acts and omission of the Developer while working within the Temporary Construction Easement. The Temporary Construction Easement should be placed on an upcoming City Council Agenda for approval and execution by the City. This Easement is temporary and should not be recorded.

Access Easement (Well Site Driveway)

8. Somoco has a pre-existing oil & gas lease over the City's park. This easement is proposed for the purpose of relocation of the driveway to the City Park by Pulte which provides Somoco access to its existing oil well. The Access Easement is adequate for this purpose. The revised Access Easement is acceptable as provided and should be placed on an upcoming City Council Agenda for approval, execution, and recording.

Public Access Easement

9. The Public Access Easement is for the purpose of allowing public access over the proposed development to the City's park by the public. We have no objection to the form and content of the Public Access Easement subject to the provision of an updated title search once Pulte closes on the property. This Easement should be placed on an upcoming City Council Agenda for approval, execution and recording.

All original documents should be forwarded by the Developer to the City to be approved, accepted, retained in the file, or recorded in accordance with the directions set forth in this letter.

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

Jeffrey Herczeg, Director of Public Works City of Novi April 18, 2019 Page 4

Very truly yours,

ROSATI SCHULTZ JOPPICH & AMPSBUECHLER PC

Elizabeth Kudla Saarela

EKS

Enclosures

C: Cortney Hanson, Clerk (w/Original Enclosures)

Charles Boulard, Community Development Director (w/Enclosures)

Barb McBeth, City Planner (w/Enclosures)

Sri Komaragiri, Planner (w/Enclosures)

Lindsay Bell, Planner (w/Enclosures)

Hannah Smith, Planning Assistant (w/Enclosures)

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

George Melistas, Senior Engineering Manager (w/Enclosures)

Sarah Marchioni, Community Development Building Project Coordinator (w/Enclosures)

Michael Freckelton, Taylor Reynolds & Ted Meadows, Spalding DeDecker (w/Enclosures)

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

Nicholas Scavone, Esquire (w/Enclosures)

Greg Gamalski, Esquire (w/Enclosures)

Thomas R. Schultz, Esquire (w/Enclosures)

TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement ("Agreement") is made as of Hornary (2019 by and between City of Novi, Michigan, a Michigan municipal corporation ("Grantor"), whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375, and Pulte Homes of Michigan LLC, a Michigan limited liability company ("Grantee"), whose address is 100 Bloomfield Hills Parkway, Suite 150, Bloomfield Hills, Michigan 48304.

RECITALS:

- A. Grantor is the owner of real property located in the City of Novi, Oakland County, State of Michigan, described on Exhibit A attached hereto (the "Grantor's Property").
- B. Grantee is the owner, or shall become the owner, of real property located in the City of Novi, County of Oakland, State of Michigan, described on Exhibit B attached hereto (the "Grantee's Property"), which Grantee intends to develop into a residential condominium project (the "Condominium").
- C. Grantor desires to grant Grantee a non-exclusive temporary easement over a part of Grantor's Property as hereinafter set forth.

NOW, THEREFORE, in consideration of One Dollar (\$1), the receipt and adequacy of which is hereby acknowledged by the parties, the parties hereto agree as follows:

- 1. Grantor hereby grants to Grantee a non-exclusive easement (the "Easement") on, over and across the portion of the Grantor's Property described on Exhibit C attached hereto (the "Easement Area") for the purposes of construction of a driveway (the "Driveway") and parking lot (the "Parking Lot" and together with the Driveway, collectively the "Improvements") depicted on Exhibit D attached hereto. Upon completion of the Improvements, Grantee shall promptly remove all construction debris, materials and equipment and restore the surface of the Easement Area (except for the landscaping) to substantially the same condition as existed prior to such work.
- 2. The Driveway shall be designed, constructed, and improved according to Oakland County Road specifications (including turning radii), certified for a commercial drive or street used for heavy trucks, including tanker trucks and work-over rig transports. The Parking Lot shall be designed, constructed, and improved in accordance with the specifications attached as Exhibit E hereto.
- 3. The Easement and this Agreement shall continue until such time that Grantee sends the Grantor written notice confirming that the Improvements are completed, but shall automatically terminate two (2) years after the date of this Agreement without any further action required by either party. Further, if Grantee does not proceed with development of the Condominium, then Grantee shall have the right to terminate this Agreement unilaterally by written notice to the Grantor, and Grantee may record such termination in the real estate records to give record notice of such termination.
- 4. This Agreement may be amended or modified and any requirement of this Agreement may be waived only by the written consent of all the parties hereto, evidenced by a document which has been fully executed, notarized, and recorded in the records of the County in which the Grantor's Property is situated.

- 5. Grantor represents that Grantor is the fee simple owner of the Grantor's Property with full authority to execute this Agreement and grant the Easement described in this Agreement.
- 6. Grantee, at its sole cost and expense, shall maintain and keep in effect, general liability and automobile insurance for work performed by Grantee in the Easement Area during and until completion of any construction and installation or any such work performed in the Easement Area. Such policies shall name Grantor as an additional insured and Grantee shall provide Grantor with a certificate of insurance or other evidence of its coverage.
- 7. Grantee, by acceptance and execution of this Agreement, hereby agrees to indemnify, defend and hold harmless Grantor from and against any and all claims, counter-claims, suits, debts, demands, actions, judgements, liens, injuries, liabilities, damages, costs, expense, including attorney's fees and actual expert witness' fees paid for or incurred by Grantor, arising out of, resulting from or incident to, any act or omission of Grantee in relation to Grantee's work in the Easement Area.
- 8. The laws of the State of Michigan shall govern the interpretation, validity, performance and enforcement of this Agreement.
- 9. This Agreement and all other rights and obligations of the parties hereunder shall run with the land and shall bind and inure to the benefit of the respective parties hereto and their personal representatives, heirs, successors and assigns.
- 10. This Agreement may be signed in counterparts, each of which shall constitute an original but all of which shall together constitute one and the same Agreement.
 - 11. The Recitals are hereby incorporated into this Agreement as if fully set forth in this Section.
- 12. This Agreement is exempt from county and state transfer taxes under MCL 207.505(a) and MCL 207.526(a) respectively.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto affix their hands as of the day and year first above written.

| | | CITY OF NOVI, MICHIGAN, a Michigan municipal corporation |
|--|------------|--|
| | | By: |
| | | Its: |
| STATE OF MICHIGAN |)) ss. | |
| COUNTY OF OAKLAND |) | |
| The foregoing instrum, to corporation, on behalf of the co | he | owledged before me this day of, 2019, by of City of Novi, Michigan, a Michigan municipal |
| | | Notary Public County, Michigan |
| | | Acting in County |
| | | My Commission Expires: |

PULTE HOMES OF MICHIGAN LLC, a Michigan limited liability company

By: Joe Skore

Its:

Vice President of Land Acquisition

STATE OF MICHIGAN

COUNTY OF OAKLAND

)ss.

The foregoing instrument was acknowledged before me this day of February, 2019, by Joe Skore, the Vice President of Land Acquisition of Pulte Homes of Michigan LLC, a Michigan limited liability company, on behalf of the company.

DEBORAH ALTMAN Notary Public, State of Michigan County of Oakland My Commission Expires Jul. 03, 2023 Acting in the County of Out Law

Hand County, Michigan My Commission Expires:

Drafted by:

Nicholas P. Scavone, Jr. **Bodman PLC** 6th Floor at Ford Field 1901 St. Antoine Street Detroit, MI 48226 313-259-7777

When Recorded Return To:

Nancy Willson Bodman PLC 201 W. Big Beaver Road, Suite 500 Troy, Michigan 48084 248-743-6000

EXHIBIT A

DESCRIPTION OF GRANTOR'S PROPERTY

Property situated in the City of Novi, County of Oakland, State of Michigan, described as follows:

T1N, R8E, SECTION 17, PART OF THE SW 1/4. BEGINNING AT POINT DISTANT N04°04'19"W 1666.34 FEET FROM THE SW SECTION CORNER; THENCE N04°04'19"W 343.67 FEET; THENCE N86°38'51"E 2422.50 FEET; THENCE S02°54'21"E 1329.76 FEET; THENCE S86°36'55"W 422.60 FEET; THENCE S03°11'51"E 678.08 FEET; THENCE S86°35'42"W 630.62 FEET; THENCE N02°47'07"W 403.46 FEET; THENCE N87°12'53"E 46 FEET; THENCE N02°47'07"W 704.49 FEET; THENCE N87°12'53"E 329 FEET; THENCE N02°37'05"W 278.58 FEET; THENCE S87°22'55"W 416.40 FEET; THENCE N02°47'07"W 69.84 FEET; THENCE S87°12'53"W 537.33 FEET; THENCE N03°50'53"W 208.58 FEET; THENCE S86°09'07"W 787.52 FEET TO THE PLACE OF BEGINNING, CONTAINING 52.16 ACRES.

Tax Parcel Number: 22-17-300-016

EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

Property situated in the City of Novi, County of Oakland, State of Michigan, described as follows:

PART OF THE SOUTHWEST 1/4 OF SECTION 17, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE SW CORNER OF SAID SECTION 17; THENCE N01°03'30"W, ALONG THE WEST LINE OF SAID SECTION 17, 2010.00 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID WEST LINE OF SECTION 17, N01°03'30"W 117.64 FEET; THENCE N89°39'40"E 770.00 FEET; THENCE N01°03'30"W 510.71 FEET TO A POINT ON THE EAST-WEST 1/4 LINE OF SAID SECTION 17; THENCE N89°40'58"E, ALONG SAID EAST-WEST 1/4 LINE, 1665.34 FEET; THENCE S00°07'10"W 627.69 FEET; THENCE S89°39'40"W 2422.44 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 25.99 ACRES OF LAND, MORE OR LESS, AND IS SUBJECT TO THAT PART NOW USED AS WIXOM ROAD.

Tax Parcel Number: 22-17-300-013

Commonly known as: 26700 Wixom Road, Novi, Michigan 48374

EXHIBIT C

DESCRIPTION OF EASEMENT AREA

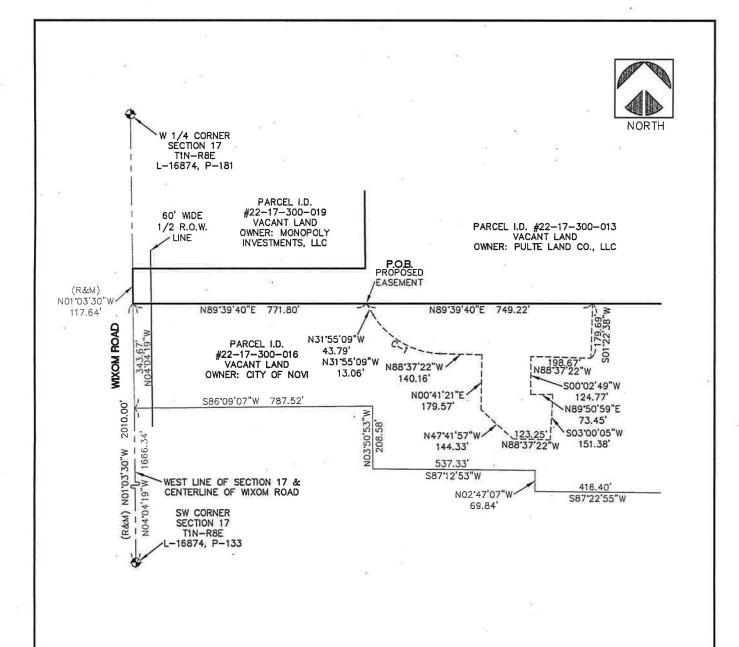
Property situated in the City of Novi, County of Oakland, State of Michigan, described as follows:

PART OF THE SOUTHWEST 1/4 OF SECTION 17, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE SW CORNER OF SAID SECTION 17; THENCE N01°03'30"W, ALONG THE WEST LINE OF SAID SECTION 17, 2010.00 FEET; THENCE N89°39'40"E 771.80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°39'40"E 749.22 FEET; THENCE S01°22'38"W 179.69 FEET; THENCE N88°37'22"W 198.67 FEET; THENCE S00°02'49"W 124.77 FEET; THENCE N89°50'59"E 73.45 FEET; THENCE S03°00'05"W 151.38 FEET; THENCE N88°37'22"W 123.25 FEET; THENCE N47°41'57"W 144.53 FEET; THENCE N00°41'21"E 179.57 FEET; THENCE N88°37'22"W 140.16 FEET; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 267.50 FEET, AN ARC LENGTH OF 264.74 FEET, A DELTA OF 56°42'12" AND A CHORD BEARING AND DISTANCE OF N60°16'16"W 254.06 FEET; THENCE N31°55'09"W 43.79 FEET TO THE POINT OF BEGINNING.

Part of Tax Parcel Number: 22-17-300-016

EXHIBIT D

DEPICTION OF IMPROVEMENTS



CURVE DATA

RADIUS=267.50' ARC LENGTH=264.74' DELTA=56'42'12" CHORD=N60'16'16"W 254.06'

I, WES LEE O. UMLOR, PROFESSIONAL SURVEYOR, HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE HEREIN DESCRIBED PARCELS OF LAND; THAT THE RATIO OF CLOSURE OF THE UNADJUSTED FIELD OBSERVATIONS IS NOTED AND WITHIN THE ACCEPTED LIMITS; AND THAT I HAVE FULLY COMPLIED WITH THE REGULATIONS OF ACT 132, P.A. 1970.

BASIS OF BEARINGS: HELD BEARING OF N01°03'30"W ALONG THE WEST LINE SECTION 17 PER DEEDED LEGAL DESCRIPTION.

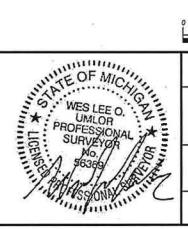
ERROR OF CLOSURE: 1/10,000+

Diffin-Umlor

& ASSOCIATES

Civil Engineering • Surveying • Landscaping • Construction Services

49287 WEST ROAD, WIXOM, MI 48393 PH: (248) 773-7656, FAX: (866) 690-4307



EASEMENT LAYOUT

SHEET 2 OF 3

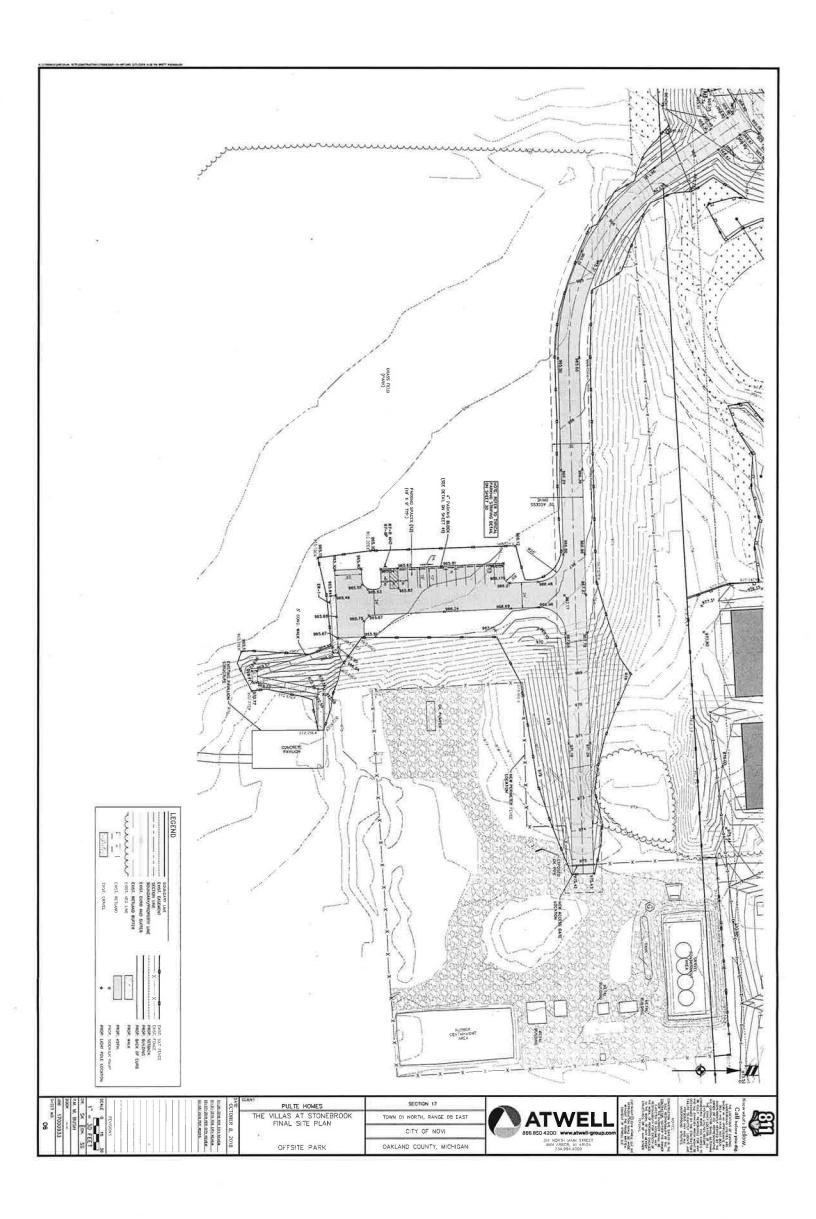
CLIENT:
PULTE LAND COMPANY, LLC
A MICHIGAN LIMITED LIABILITY COMPANY
100 BLOOMFIELD HILLS PARKWAY,
BLOOMFIELD HILLS, MI 48304

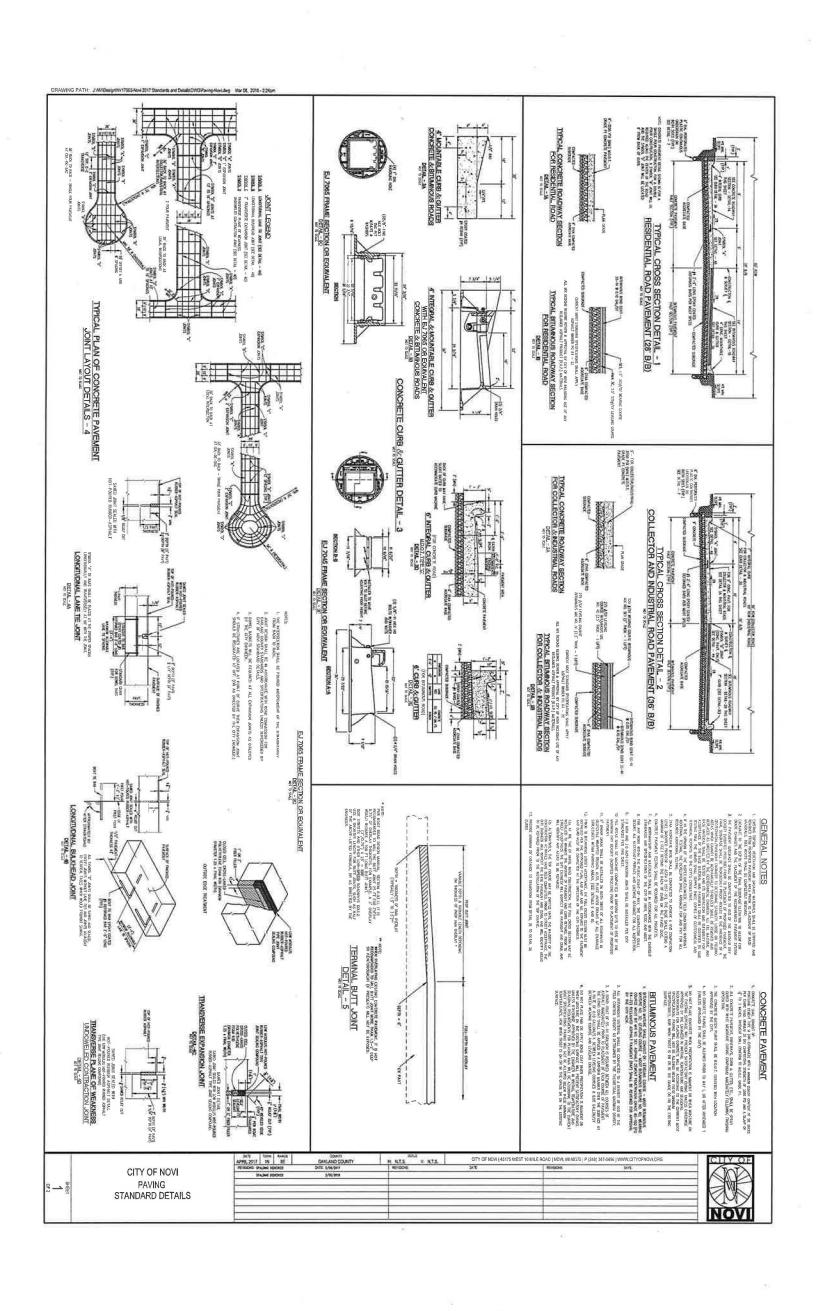
SECTION 17 TOWN 1 NORTH, RANGE 8 EAST CITY OF NOVI OAKLAND COUNTY, MICHIGAN

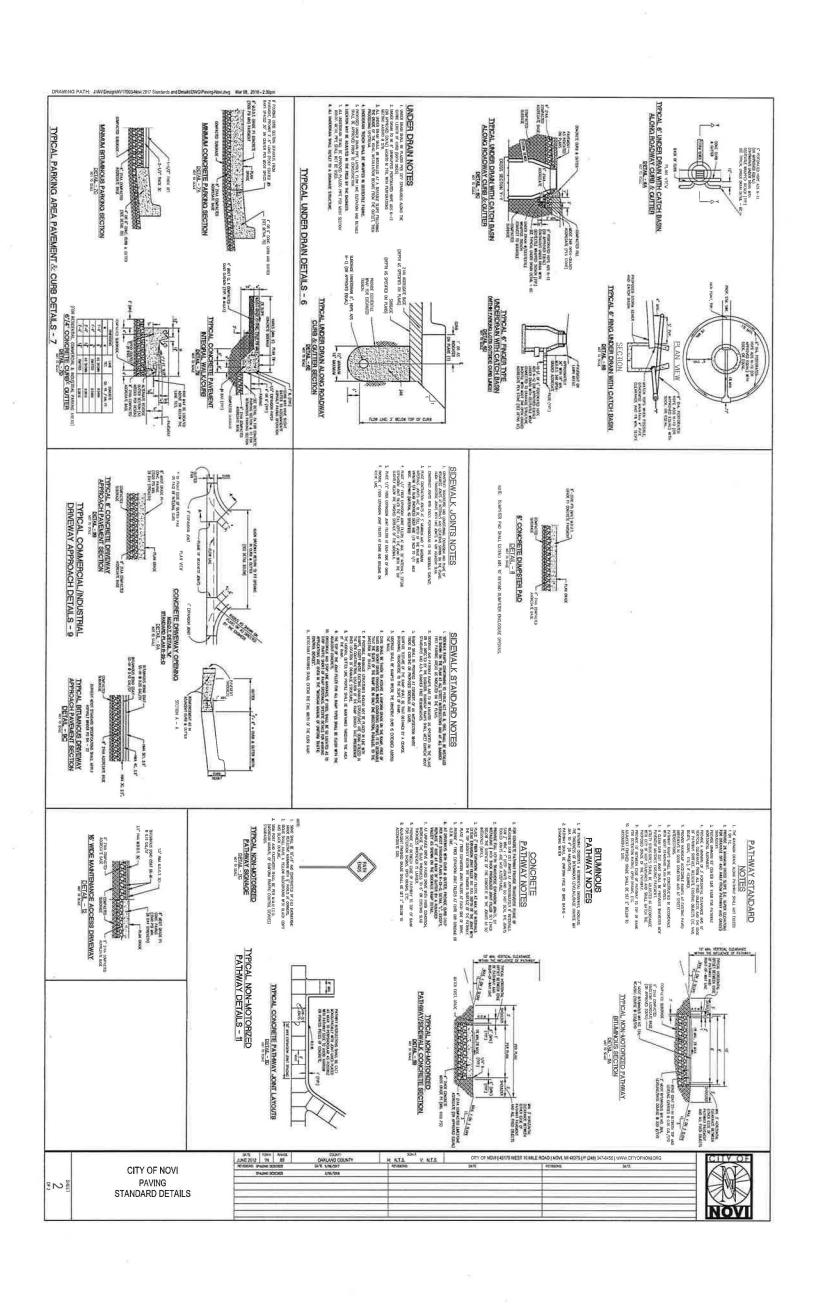
Date: Project No.: 11-28-2018 181103

EXHIBIT E

PARKING LOT SPECIFICATIONS







Engineering & Surveying Excellence since 1954

March 14, 2019

Darcy Rechtien, Construction Engineer City of Novi 26300 Lee BeGole Drive Novi, Michigan 48375

Re: Villas at Stonebrook - Document Review

Novi # JSP17-0062 SDA Job No. NV18-216 DOCUMENTS APPROVED

Dear Ms. Rechtien

We have reviewed the following document package received by our office on March 14, 2019 against the submitted plan set and previous letter. We offer the following comments:

Submitted Documents:

- 1. Off-Site Water System Easements (unexecuted: exhibits dated 7-28-17 & 10-19-17) Exhibits for water main and temporary construction easements across Providence Parkway approved; Exhibits for water main and temporary construction easements across ITC Corridor approved.
- 2. Emergency Access Easement (Executed July 19, 2018 & September 21, 2018) Exhibits for Emergency Access Easement across Providence Hospital Approved. Exhibits for Emergency Access Easement across ITC Corridor Approved.
- **3.** Sunoco Oil/Gas Access Easement (On-Site) (unexecuted: exhibits dated 11/28/18) **-** Exhibits Approved.
- **4.** Sunoco Oil/Gas Access Easement (Off-Site South) (Executed 1/21/19; exhibits dated 11/28/18) Exhibits Approved.
- **5.** Temporary Construction Easement (Off-Site South) (unexecuted: exhibits dated 11/28/18) Exhibits Approved.

Engineering & Surveying Excellence since 1954

Documents that require revisions should be resubmitted to the City for further review. 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): Cortney Hanson, City Clerk

Sweller

Sarah Marchioni, City Building Project Coordinator

Ted Meadows, Spalding DeDecker Taylor Reynolds, Spalding DeDecker

George Melistas, City Engineering Senior Manager

Angie Sosnowski, City Community Development Bond Coordinator

Beth Saarela, Johnson Rosati, Schultz, Joppich PC