# NOVI cityofnovi.org

# CITY of NOVI CITY COUNCIL

Agenda Item D October 24, 2016

**SUBJECT:** Acceptance of a Conservation Easement from Toll MI V Limited Partnership, for woodlands, wetlands, and wetland buffers as a part of the JSP14-18 Ridgeview Villas site, located south of Ten Mile Road and east of Novi Road in Section 26 of the City.

SUBMITTING DEPARTMENT: Department of Community Development, Planning Division

Baub

CITY MANAGER APPROVAL:

MA

#### **BACKGROUND INFORMATION:**

The applicant has received Final Site Plan approval of a 20.09 acre attached condominium project located south of Ten Mile Road and east of Novi Road. The project will provide 93 units along with two on-site detention ponds, preservation of wetland areas, pathway connection through to future development to the north, and offsite pathway to the Novi Dog Park. The Planning Commission approved the Preliminary Site Plan, Wetland Permit, Woodland Permit, and Stormwater Management Plan on September 30. 2015. The Revised Final Site Plan was approved administratively on March 7, 2016. The development is now under construction.

The applicant is providing a Conservation Easement the west, north, and east parcel boundaries where woodlands, wetlands, and wetland buffers are incorporated. The Conservation Easement graphically depicts this easement in Exhibit B. The total conservation area is 3.006 acres.

The Easement has been reviewed by the City's professional staff and consultants. The Easement is currently in a form acceptable to the City Attorney's office for acceptance by the City Council.

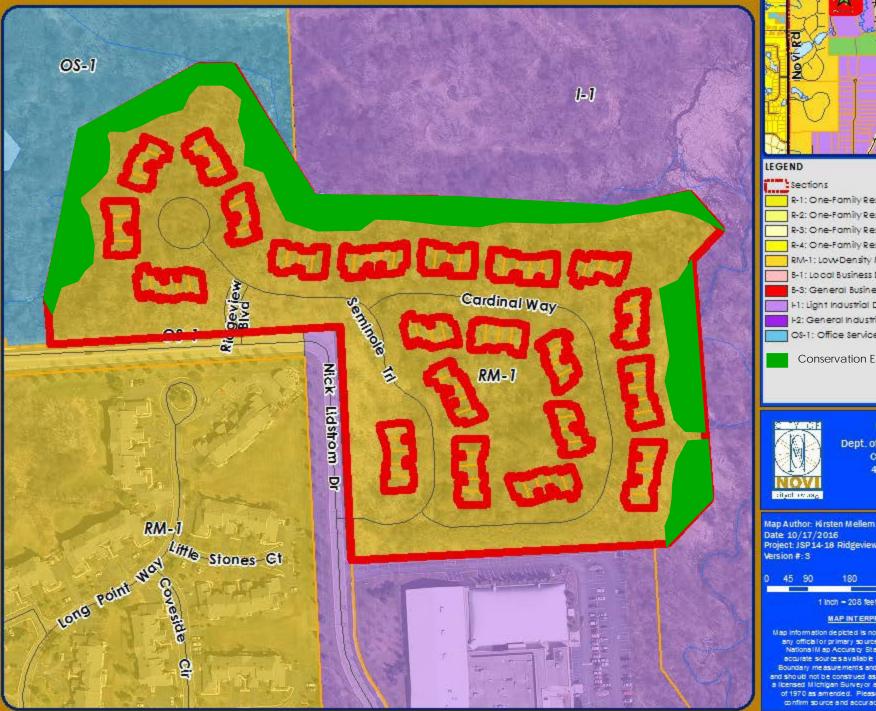
**RECOMMENDED ACTION:** Acceptance of a Conservation Easement from Toll MI V Limited Partnership, for woodlands, wetlands, and wetland buffers as a part of the JSP14-18 Ridgeview Villas, located south of Ten Mile Road and east of Novi Road in Section 26 of the City.

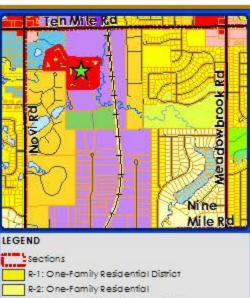
	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

# JSP14-18: Ridgeview Villas

**Location Map** 





# R-3: One-Family Residential District R-4: One-Family Residential District RM-1: Low-Density Multiple Family B-1: Local Business District B-3: General Business District H1: Light Industrial District 1-2: General Industrial District OS-1: Office Service District **Conservation Easement**



# City of Novi

Dept. of Community Development City Hall / Civic Center 45175 W Ten Mile Rd Novi, MI 48375 cityofnovi.org

Date 10/17/2016 Project: JSP 14-18 Ridgeview Villas Version #: 3 45 90 180



1 Inch - 208 feet

#### 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 libersed 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.



#### 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

October 12, 2016

Barb McBeth, City Planner City of Novi 45175 Ten Mile Road Novi, MI 48375-3024

RE: Ridgeview JSP14-18

**Conservation Easement** 

Dear Ms. McBeth:

We have received and reviewed the original executed Conservation Easement for the Ridgeview Villas. The terms of the original Conservation Easement have been revised to address the issues raised in our Review Report, dated September 20, 2016. The Conservation Easement protects the remaining woodlands, wetlands and wetland buffers within the Ridgeview Villas Development as required by the final approved PRO Plan. We have attached exhibits to the original Conservation Easement, which was submitted without exhibits. Subject to review and approval of the attached exhibits as accurate by the City's Planner and the applicant, the enclosed Conservation Easement should be placed on an upcoming City Council Agenda for acceptance.

Should you have any questions or concerns relating to the issues set forth above, please feel free to contact me in that regard.

Sincerely,

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

Élizabeth K. Saarela

**EKS** 

**Enclosures** 

Barb McBeth, City Planner October 12, 2016 Page 2

C: Cortney Hanson, Clerk (w/original Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
Sri Komaragiri, Planner (w/Enclosures)
Kirsten Mellem, Planner (w/Enclosures)
Adrianna Jordan, Planner (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Theresa Bridges, Civil Engineer (w/Enclosures)
Sarah Marchioni, Building Project Coordinator (w/Enclosures)
Pete Hill, ECT (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Mike Noles, Toll Brothers (w/Enclosures)

Thomas R. Schultz, Esquire (w/Enclosures)

## **CONSERVATION EASEMENT**

THIS **CONSERVATION EASEMENT** is made this \_\_\_\_\_ day of September, 2016, by and between **TOLL MI V LIMITED PARTNERSHIP**, a Michigan limited partnership, whose address is 28004 Center Oaks Court, Suite 200, Wixom, MI 48393 ("**Developer**"), and the **CITY OF NOVI**, its successors, assigns, or transferees, whose address is 45175 Ten Mile Road, Novi, MI 48375 ("**City**").

## RECITATIONS:

- A. Developer is developing that certain parcel of land situated in the City of Novi, Oakland County, Michigan, described on Exhibit A the attached hereto and incorporated herein ("Property") as Ridgeview of Novi ("Condominium") a condominium project formed pursuant to master deed recorded at liber 49373, page 698, Oakland County Register of Deeds ("Master Deed").
- B. The Property is subject to a Planned Rezoning Overlay Agreement recorded November 4, 2015, at Liber 48766 Page 1 Oakland County Records ("PRO"), and final site plan approval has been issued ("Site Plan") for the construction of Condominium on the Property, all subject to provision of an appropriate easement to permanently protect the remaining woodlands, wetlands and wetland buffers thereon as more particularly described on Exhibit B, attached hereto and made a part hereof, the second page of which contains a drawing depicting the protected area ("Easement Area").
- C. By the terms of the Master Deed, the Developer reserved, among other things, the right to grant and encumber the Property with easements and other agreements which might be required by the PRO, the Site Plan and for the construction and operation of the Condominium.
- D. In order to comply with the terms of the PRO and the Site Plan, the Developer desires to grant this Conservation Easement

NOW, THEREFORE, in consideration of the sum of One Dollar (\$ 1.00), in hand paid, the receipt and adequacy of which are hereby acknowledged, Developer hereby reserves, conveys and grants the following Conservation Easement, which shall be binding upon the Developer, and the City, and their respective heirs, successors, assigns and/or transferees and shall be for the benefit of the City, all Developers, the association responsible for the Condominium and purchasers of the property and their respective heirs, successors, assigns and/or transferees. This

Conservation Easement is dedicated pursuant to subpart 11 of part 21 of the Natural Resources and Environmental Protection Act being MCL 324.2140, et. Seq., upon the terms and conditions set forth herein as follows:

- 1. The purpose of this Conservation Easement is to protect the remaining woodlands, wetlands and wetland buffers, as shown on the attached and incorporated Exhibit B. The subject areas shall be perpetually preserved and maintained, in their natural and undeveloped condition, unless authorized by permit from the City, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.
- 2. Except for and subject to the activities which have been expressly authorized by permit, there shall be no disturbance of the woodlands, wetlands, wetland buffers and/or vegetation within the Easement Area, including altering the topography of; placing fill material in; dredging, removing or excavating soil, minerals, or trees, and from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise altering or developing, and/or constructing, operating, maintaining any use or development in the Easement Area.
- 3. No grass or other vegetation shall be planted in the Easement Areas with the exception of plantings approved, in advance, by the City in accordance with all applicable laws and ordinances.
- 4. All areas identified on Exhibit B as parks, open space, landscape easement areas, or berm or scenic easement areas shall be forever reserved and preserved, in the condition specifically approved by the City in accordance with applicable laws and ordinances.
- 5. This Conservation Easement does not grant or convey to City, or any member of the general public, any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Developer, City and its authorized employees and agents (collectively, "City's Representatives") may enter upon and inspect the Easement Area to determine whether the Easement Area is being maintained in compliance with the terms of the Conservation Easement.
- 6. In the event that the Developer shall at any time fail to carry out the responsibilities specified within this Document, and/or in the event of a failure to preserve and/or maintain the woodlands, wetlands and wetland buffers in reasonable order and condition, the City may serve written notice upon the Developer setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other Council, body or official delegated by the City Council, for the purpose of allowing the Developer to be heard as to why the City should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official, designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall thereupon have the power and authority, but not obligation,

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to enter upon the property, or cause its agents or contractors to enter upon the property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation, including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Developer, and such amount shall constitute a lien on an equal pro rata basis as to all of the lots on the property. The City may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within 30 days of a billing to the Developer, all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each lot, 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 Developer, and, in such event, the Developer shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

- 7. Within 90 days after the Conservation Easement shall have been recorded, Developer at its sole expense, shall place such signs, defining the boundaries of the Easement Area and, describing its protected purpose, as indicated herein.
- 8. Notwithstanding anything contained herein to the contrary, upon the occurrence of the "transfer date" or "turnover date" as provided in the Master Deed, or upon the transfer of the Property by deed to a subsequent developer, the Developer shall have no further responsibility for the obligations under this Conservation Easement, it being agreed that the association of co-owners responsible for the Condominium or grantee shall be solely responsible for such obligations and all references to the Developer set forth herein shall thereafter be deemed to be a reference to such association and/or grantee of the deed.
- 9. This Conservation Easement has been made and given for a consideration of a value less that One Hundred (\$ 100.00) Dollars, and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax, pursuant to MSA 7.456(5)(a).

SIGNATURES ON FOLLOWING PAGES

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## SIGNATURES TO CITY OF NOVI/TOLL MI V LIMITED PARTNERSHIP

IN WITNESS WHEREOF, Developer and City have executed the Conservation Easement as of the day and year first above set forth.

### **DEVELOPER:**

TOLL MI V LIMITED PARTNERSHIP, a Michigan limited partnership

By:

TOLL MI GP CORP.

General Partner

Printed Name: Michael T. Noles

Its: Senior Vice President

STATE OF MICHIGAN

)SS

COUNTY OF OAKLAND )

On this 27th day of September, 2016, before me, personally appeared Michael T. Noles, the Senior Vice President of Toll MI GP Corp., general partner on behalf of TOLL MI V LIMITED PARTNERSHIP, to me known to be such person and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, Marilee S. Pietersen

Oakland County, MI

My commission expires 12/23/2017

Acting in Oakland County

# SIGNATURES TO CITY OF NOVI/TOLL MI V LIMITED PARTNERSHIP

IN WITNESS WHEREOF, Developer and City have executed the Conservation Easement as of the day and year first above set forth.

		CITY:
		CITY OF NOVI A Municipal Corporation
		By: Its:
STATE OF MICHIGAN COUNTY OF OAKLAND	) ) ss )	
	ment was acknowledged befor , on behalf of the	
		Notary Public Oakland County, Michigan My Commission Expires:
Drafted by and after recording, return to:		
Drafted By: Elizabeth K. Saarela Johnson, Rosati, Schultz & Joppich, P.C. 27555 Executive Drive, Suite 250 Farmington Hills. MI 48331		
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#### **EXHIBIT A**

"RIDGEVIEW VILLAS"

LEGAL DESCRIPTION SUBJECT PROPERTY

COMMENCING AT THE NORTHWEST CORNER OF SECTION 26, T.1N, R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE N86°27'27"E 2123.10 FEET ALONG THE CENTERLINE OF TEN MILE ROAD; THENCE S07°58'33"E 2072.30 FEET; THENCE S86°56'27"W 355.53 FEET; THENCE N35°58'56"W 279.43 FEET; THENCE N03°03'33"W 269.20 FEET TO THE POINT OF BEGINNING; THENCE S86°56'27"W 658.95 FEET; THENCE N02°47'33"W 509.40 FEET; THENCE S86°27'27" W 630.00 FEET; THENCE N03°32'33"W 100.00 FEET; THENCE N11°35"45"E 370.00 FEET; THENCE N60°51'08"E 290.00 FEET; THENCE N90°00'00"E 75.00 FEET; THENCE S31°29'21"E 339.33 FEET; THENCE N89°23'14"E 231.65 FEET; THENCE S86°22'13"E 420.86 FEET; THENCE N76°46"23"E 167.10 FEET; THENCE S41°34'10"E 105.00 FEET; THENCE S43°34'07"W 91.51 FEET; THENCE S04°10'41"E 519.60 FEET; THENCE S42°47'02"W 133.85 FEET; THENCE S86°56'27"W 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 20.09 ACRES OF LAND, MORE OR LESS, AND BEING SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

Tax I.D. No. 22-26-101-025

#### **EXHIBIT B**

#### RIDGEVIEW VILLAS OF NOVI

LEGAL DESCRIPTION
WETLAND CONSERVATION EASEMENT

A Wetland Conservation Easement, located in a Part of the Northwest 1/4 of Section 26, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the Northwest corner of said Section 26; thence South 02°47'33" East, 817.88 feet along the West line of said Section 26 and the centerline of Novi Road; thence North 86°54'46" East, 290.16 feet; thence South 02°47'44" East, 202,00 feet; thence North 86°54'46" East, 125,19 feet; thence South 03°05'14" East, 20.07 feet; thence North 86°27'27" East, 95.98 feet; thence North 03°32'33" West, 69.03 feet, for a POINT OF BEGINNING "A"; thence continuing North 03°32'33" West, 30.97 feet; thence North 11°35'45" East, 370.00 feet; thence North 60°51'08" East, 290.00 feet; thence North 90°00'00" East, 75.00 feet; thence South 31°29'21" East, 339.33 feet; thence North 89°23'14" East, 94.44 feet, for a reference POINT "A"; thence South 06°27'50" West, 61.60 feet; thence South 54°51'01" West, 16.07 feet; thence South 75°03'56" West, 18.97 feet; thence North 83°33'22" West, 75.52 feet; thence North 43°40'16" West, 61.07 feet; thence North 29°17'14" West, 40.21 feet; thence North 28°10'24" West, 56.38 feet; thence North 52°29'19" West, 49.97 feet; thence North 09°31'47" West, 61.33 feet; thence North 09°28'42" East, 44.68 feet; thence North 26°24'50" East, 11.99 feet; thence North 66°08'49" West, 58.33 feet; thence North 60°23'52" West, 26.62 feet; thence North 87°09'18" West, 22.13 feet; thence South 54°55'09" West, 34.45 feet; thence South 37°31'37" West, 29.50 feet; thence South 40°13'23" West, 46.87 feet; thence South 69°03'56" West, 38.02 feet; thence North 67°52'27" West, 28.12 feet; thence South 39°55'38" West, 34.19 feet; thence North 89°09'05" West, 30.56 feet; thence South 48°04'02" West, 8.67 feet; thence South 05°03'48" East, 33.92 feet; thence South 05°03'48" East, 8.33 feet; thence South 22°07'33" West, 50.79 feet; thence South 72°26'27" West, 57.36 feet; thence South 09°33'44" West, 32.93 feet; thence South 35°53'31" East, 21.00 feet; thence South 17°35'19" East, 72.46 feet; thence South 01°35'06" East, 31.08 feet; thence South 44°34'57" West, 17.23 feet; thence South 33°04'56" West, 27.83 feet; thence South 65°29'45" West, 38.31 feet; thence South 26°28'17" West, 79.08 feet, to the Point of Beginning "A".

And also, commencing at said reference POINT "A"; thence North 89°23'14" East, 12.09 feet, for a POINT OF BEGINNING "B"; thence continuing North 89°23'14" East, 125.11 feet; thence South 86°22'13" East, 420.86 feet; thence North 76°46'23" East, 167.10 feet; thence South 41°34'10" East, 105.00 feet; thence South 43°34'07" West, 8.67 feet, for a reference POINT "B"; thence North 46°25'53" West, 1.76 feet; thence North 71°10'59" West, 39.62 feet; thence North 54°29'20" West, 49.01 feet; thence North 82°29'31" West, 47.43 feet; thence South 85°46'01" West, 41.89 feet; thence North 85°37'47" West, 15.42 feet; thence South 63°45'22" West, 63.19 feet; thence South 83°11'33" West, 44.43 feet; thence North 81°39'23" West, 61.26 feet; thence South 54°09'34" West, 18.65 feet; thence North 89°56'58" West, 52.09 feet; thence North 75°27'51" West, 24.47 feet; thence South 62°19'36" West, 37.43 feet; thence North 78°08'51" West, 54.77 feet; thence South 49°36'31" West, 18.31 feet; thence North 73°58'51" West, 27.88 feet; thence North 81°46'05" West, 45.77 feet; thence North 73°45'55" West, 50.85 feet; thence South 87°13'24" West, 30.25 feet; thence South 82°08'08" West, 91.96 feet; thence North 06°27'50" East, 58.17 feet, to the Point of Beginning "B".

And also, commencing at said reference POINT "B"; thence South 43°34'07" West, 82.84 feet; thence South 04°10'41" East, 18.36 feet, for a POINT OF BEGINNING "C"; thence continuing South 04°10'41" East, 357.17 feet, for a reference POINT 'C'; thence South 82°14'57" West, 21.94 feet; thence North 73°15'13" West, 21.45 feet; thence North 87°20'17" West, 20.59 feet; thence North 11°57'06" West, 55.86 feet; thence North 11°26'41" West, 64.07 feet; thence North 17°26'29" East, 36.53 feet; thence North 14°05'08" West, 46.38 feet; thence North 08°19'59" West, 11.55 feet; thence North 05°18'15" West, 87.48 feet; thence North 59°46'52" East, 47.71 feet; thence North 42°55'55" East, 44.01 feet, to the Point of Beginning "C".

And also, commencing at said reference POINT "C"; thence South 04°10'41" East, 29.67 feet, for a POINT OF BEGINNING "D"; thence continuing South 04°10'41" East, 114.39 feet; thence South 42°47'02" West, 133.85 feet; thence North 25°38'40" West, 31.21 feet; thence North 33°02'25" East, 38.71 feet; thence North 19°50'12" West, 21.45 feet; thence North 02°43'56" East, 43.84 feet; thence North 09°02'09" East, 31.33 feet; thence North 32°34'20" East, 58.84 feet; thence North 84°31'15" East, 34.97 feet; thence North 66°01'57" East, 9.59 feet, to the Point of Beginning "D". All of the above containing 3.006 Acres.

