



CITY of NOVI CITY COUNCIL

Agenda Item K
March 13, 2017

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from STORE Capital Acquisitions, LLC for the Everbrook Academy project located west of Beck Road north of Eleven Mile Road (parcel 22-17-400-014).

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division GDM

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The developer for Everbrook Academy, STORE Capital Acquisitions, 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 a storm water detention and sedimentation area and is providing a blanket access easement to the detention basin and oil/gas separator. The owner is also responsible for maintaining the pipes, manholes and open channels leading to and from the on-site sewer system.

The enclosed agreement has been favorably reviewed by the City Engineering consultant and the City Attorney, as described in the letter from Beth Saarela dated February 21, 2017, and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from STORE Capital Acquisitions, LLC for the Everbrook Academy project located west of Beck Road north of Eleven Mile Road (parcel 22-17-400-014).

Location Map Everbrook Academy

Everbrook Academy

Everbrook Ln

Beck Rd

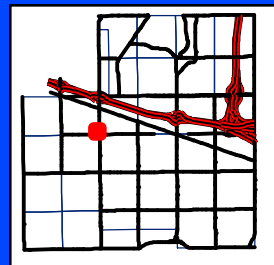
Eleven Mile Rd

Map Author: Theresa Bridges
Date: March 6, 2017
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

Feet
0 25 50 100 150
1 inch = 125 feet





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 21, 2017

George D. Melistas, Engineering Senior Manager
CITY OF NOVI
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

**Re: Everbrook Academy JSP15-0057
Storm Drainage Facility Maintenance Easement Agreement**

Dear Mr. Melistas:

We have received and reviewed, and enclosed please find the Storm Drainage Facility Maintenance Easement Agreement for storm water drainage and detention facilities serving Everbrook Academy. 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 to follow)
Charles Boulard, Community Development Director (w/Enclosures)

George Melistas, Engineering Senior Manager

February 21, 2017

Page 2

Barb McBeth, City Planner (w/Enclosures)

Sarah Marchioni, Building Permit Coordinator (w/Enclosures)

Theresa Bridges, Construction Engineer (w/Enclosures)

Darcy Rechten, Staff Engineer (w/Enclosures)

Brittany Allen, 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)

Brian Adamson, ICAP Development (w/Enclosures)

Thomas R. Schultz, Esquire (w/Enclosures)

STORM DRAINAGE FACILITY
MAINTENANCE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this ____ day of _____, 2017, by and between STORE Capital Acquisitions, LLC, a Delaware limited liability company, whose address is 8377 E. Hartford Dr., Suite 100, Scottsdale, Arizona 85255 (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").

R E C I T A T I O N S:

- A. Owner is the owner of a certain parcel of land situated in Section 17 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 child care development on the Property.
- B. The child care 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 (but not the building built upon the Property) to perform such obligation or take such corrective measures as reasonably found by the City to be appropriate or necessary with respect to the obligations outlined in this Agreement. 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.

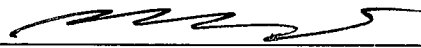
Invalidation of any of these covenants or conditions by Judgment or Court Order shall in no way affect the validity of any other provision which shall remain in full force and effect.

This agreement shall run with the land and be binding upon all owners, their agents, heirs, successors, assigns and transferees.

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

OWNER:

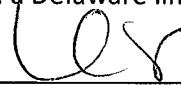
STORE CAPITAL ACQUISITIONS, LLC, a Delaware limited liability company


By: Michael J. Zieg
Its: Executive Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15 day of February, 2016,
by Michael J. Zieg, Exec. Vice President, the
Exec. Vice President of STORE Capital Acquisitions, LLC, a Delaware limited liability company.




Notary Public
Acting in Maricopa County, Arizona
My Commission Expires: 3.30.2018

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: _____

Drafted by: Elizabeth Kudla Saarela Johnson, Rosati, Schultz & Joppich, P.C. 27555 Executive Drive, Suite 250 Farmington Hills, MI 48331	And when recorded return to: Cortney Hanson, City Clerk City of Novi 45175 Ten Mile Rd Novi, MI 48375
--	---

CONSENT TO EASEMENT

As the holder of a mortgagee interest in and to the property referenced in the Storm Drainage Facility Maintenance Easement Agreement, dated _____, 20__, as shown in the Exhibit A attached hereto and incorporated herein, whereby STORE Capital Acquisitions, LLC grants and conveys said easement to the City of Novi, 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 and shall bind the undersigned and the heirs, successors and assigns of the undersigned.

IN WITNESS WHEREOF the undersigned has caused its signature to be placed on the 14th day of February, 2017.

CITIBANK, N.A.

By: _____

Name: _____

Its: _____

John Hannon
Vice President

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

The foregoing Consent to Easement was acknowledged before me this 14th day of February, 2017, by John Hannon, the Vice President of CITIBANK, N.A.

Notary Public

My commission expires: _____

NOREEN SANTOS
Notary Public, State of New York
Registration #01SA6228750
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires September 27, 2018

EXHIBIT A

Legal Description

Real property in the City of Novi, County of Oakland, State of Michigan, described as follows:

Part of the Southeast 1/4 of Section 17, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point distant North 00 degrees 44 minutes 30 seconds East 333.55 feet from the Southeast section corner thence West 570.95 feet; thence North 00 degrees 44 minutes 30 seconds East 333.55 feet; thence East 570.95 feet; thence South 00 degrees 44 minutes 30 seconds West 333.55 feet to the Point of Beginning. Excepting there from the following described land deeded to the City of Novi as disclosed by Warranty Deed recorded in Liber 19494, page 140, described as: Part of the Southeast 1/4 of Section 17, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as: Beginning at a point distant North 00 degrees 44 minutes 30 seconds East 333.55 feet along the East line of Section 17 from the Southeast 1/4 corner of said Section 17; thence West 60.0 feet; thence North 00 degrees 44 minutes 30 seconds East 160.0 feet; thence East 60.0 feet; thence South 00 degrees 44 minutes 30 seconds West 160.0 feet to the Point of Beginning.

BEING THE SAME AS THAT PROPERTY AS SHOWN ON ALTA/NSPS LAND TITLE SURVEY PREPARED BY ACCURATE SURVEYING AND MAPPING, DATED APRIL 19, 2016, JOB NO. 015-133, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

REAL PROPERTY IN THE CITY OF NOVI, COUNTY OF OAKLAND, STATE OF MICHIGAN, DESCRIBED AS FOLLOWS: PART OF THE SOUTHEAST 1/4 OF SECTION 17, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT A POINT DISTANT NORTH 00 DEGREES 44 MINUTES 30 SECONDS EAST 333.55 FEET FROM THE SOUTHEAST SECTION CORNER; THENCE SOUTH 89 DEGREES 26 MINUTES 06 SECONDS WEST 571.35 FEET, THENCE NORTH 00 DEGREES 48 MINUTES 35 SECONDS EAST 333.75 FEET; THENCE NORTH 89 DEGREES 27 MINUTES 15 SECONDS EAST 570.95 FEET; THENCE SOUTH 00 DEGREES 44 MINUTES 30 SECONDS WEST 333.55 FEET TO THE POINT OF BEGINNING. EXCEPTING THERE FROM THE FOLLOWING DESCRIBED LAND DEEDED TO THE CITY OF NOVI AS DISCLOSED BY WARRANTY DEED RECORDED IN LIBER 19494, PAGE 140, DESCRIBED AS: PART OF

THE SOUTHEAST 1/4 OF SECTION 17, TOWN 1 NORTH, RANGE 8 EAST,
CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS:
BEGINNING AT A POINT DISTANT NORTH 00 DEGREES 44 MINUTES 30
SECONDS EAST 333.55 FEET ALONG THE EAST LINE OF SECTION 17
FROM THE SOUTHEAST 1/4 CORNER OF SAID SECTION 17; THENCE
SOUTH 89 DEGREES 26 MINUTES 06 SECONDS WEST 60.02 FEET;
THENCE NORTH 00 DEGREES 44 MINUTES 30 SECONDS EAST 160.00
FEET; THENCE S 89 DEGREES 26 MINUTES 06 SECONDS EAST 60.02
FEET; THENCE SOUTH 00 DEGREES 44 MINUTES 30 SECONDS WEST
160.02 FEET TO THE POINT OF BEGINNING.

Exhibit B - Schedule of Maintenance

Stormwater Maintenance Schedule

Everbrook Academy

Novi, MI

The proposed development was designed with storm sewer and a detention pond. As part of the overall storm water management system, the facilities will require routine maintenance. The following details the schedule and type of work to be performed in order to maintain proper operation of the stormwater system.

Storm Sewer

Catchbasins will be inspected and cleaned on an annual basis and cleaned from debris and accumulated sediment as necessary by means of vacuum pumping. Trash and blockages shall be removed when encountered. Disposal of debris and accumulated sediment will be performed in accordance with applicable local, state, and federal guidelines and regulations.

Detention Pond

The purpose of the wet pond is to control the peak runoff from the property and to remove sediment from the water. The permanent pond cleans the water by allowing the sediment to settle prior to the water leaving the pond. As a result, sediment will build up within the pond. A minimum water depth of 3-feet shall be maintained. The pond shall be checked a minimum of once a year to verify the depth from outlet structure to pond bottom is a minimum of 3-feet. If the depth becomes less than 3-feet, the pond shall be dredged and the excess sediment removed so the depth from outlet structure to pond bottom conforms to the design plans. Sediment removed from the pond shall be disposed in accordance with local state, and federal guidelines and regulations.

Floating litter and debris shall be removed when present. Litter and debris that has become submerged shall be removed and disposed in accordance with local and state requirements.

Include inlet / outlet and overflow spillway maintenance keeping embankments clear of woody vegetation, and providing access to perform the operation and maintenance activities.

Maintenance Reports

The owner shall keep a log of inspections and maintenance activities, including the date and type of maintenance performed. The maintenance log attached shall be available for inspection and shall be furnished to City officials upon request.