

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item E
April 21, 2008

SUBJECT: Approval of form of 13-foot permanent easement for water main improvements along Pontiac Trail between West Park Drive and Beck Road (part of Parcel No. 22-03-101-010), from Kayne Properties, LLC, for the sum of \$9,100, including authorization for entry into a modified form of monitoring agreement and debt payment agreement.

SUBMITTING DEPARTMENT: Engineering *RJH*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The City is in the process of acquiring easements to install a water main along Pontiac Trail between Beck Road and West Park Drive. Engineering plans have been prepared. An aerial photograph showing the proposed route of the improvements is attached. The purpose of the project is to fill gaps in the water system on the south side of Pontiac Trail and to loop the system back to the Beck North development. The project was recommended in the 2004 Water Distribution Study and Master Plan, and is important because it provides improved water pressure and also makes Novi public water available to parcels that are currently purchasing water through other communities or have private wells.

The project was designed by Fishbeck, Thompson, Carr & Huber, in accordance with a contract authorized by City Council on February 21, 2006. Since completion of the preliminary design in October 2006, the City has been working with the property owners along the water main route to obtain easements. One easement was obtained from Lasalle Bank and approved by City Council in March 2007. The City has made good faith offers to three separate property owners controlling several different properties. However, the City has filed only one lawsuit based on the good faith offers so far (for the Waterview Apartments). The City remains in negotiation with the other property owners, which include the Novi Square retail shops and two apartment complexes owned by Edward Rose entities (Portsmouth and Springs). While these discussions are ongoing, the City wants to submit the engineering plans to the MDEQ for approval, and thus rights-of-entry have been acquired from each of the Rose entities and from Novi Square (Kayne Properties, LLC). See Item D on Consent Agenda.

Since acquiring the right-of-entry from Novi Square, the City has completed its negotiation of the terms of and compensation for the permanent easement for the watermain, a draft of which is attached. The City's offer of just compensation was \$9,100, and the property owner has agreed to accept that amount as just compensation—subject, however, to some additional non-monetary consideration by the City. Specifically, the City would agree to enter into a monitoring agreement (copy attached) that establishes the number of tap units to be paid by the property owner for connecting to the City water, once available, at 54 units. (The City has estimated the number of tap units to be 63 based on the current uses on the property, which the property owner believes is too high and does not reflect the actual usage). At the end of the monitoring period under the agreement, the City will evaluate whether the actual usage was greater or less than the estimated 54 units. If at the end of the monitoring period it turns out that the estimate of 54 units is low, and that more units were appropriate, the property owner would pay the difference in the normal course. If, however, the estimate of 54 units turns out to be high, the City would give the property owner a credit on the amount paid (normally, the City does not give such a credit).

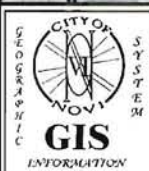
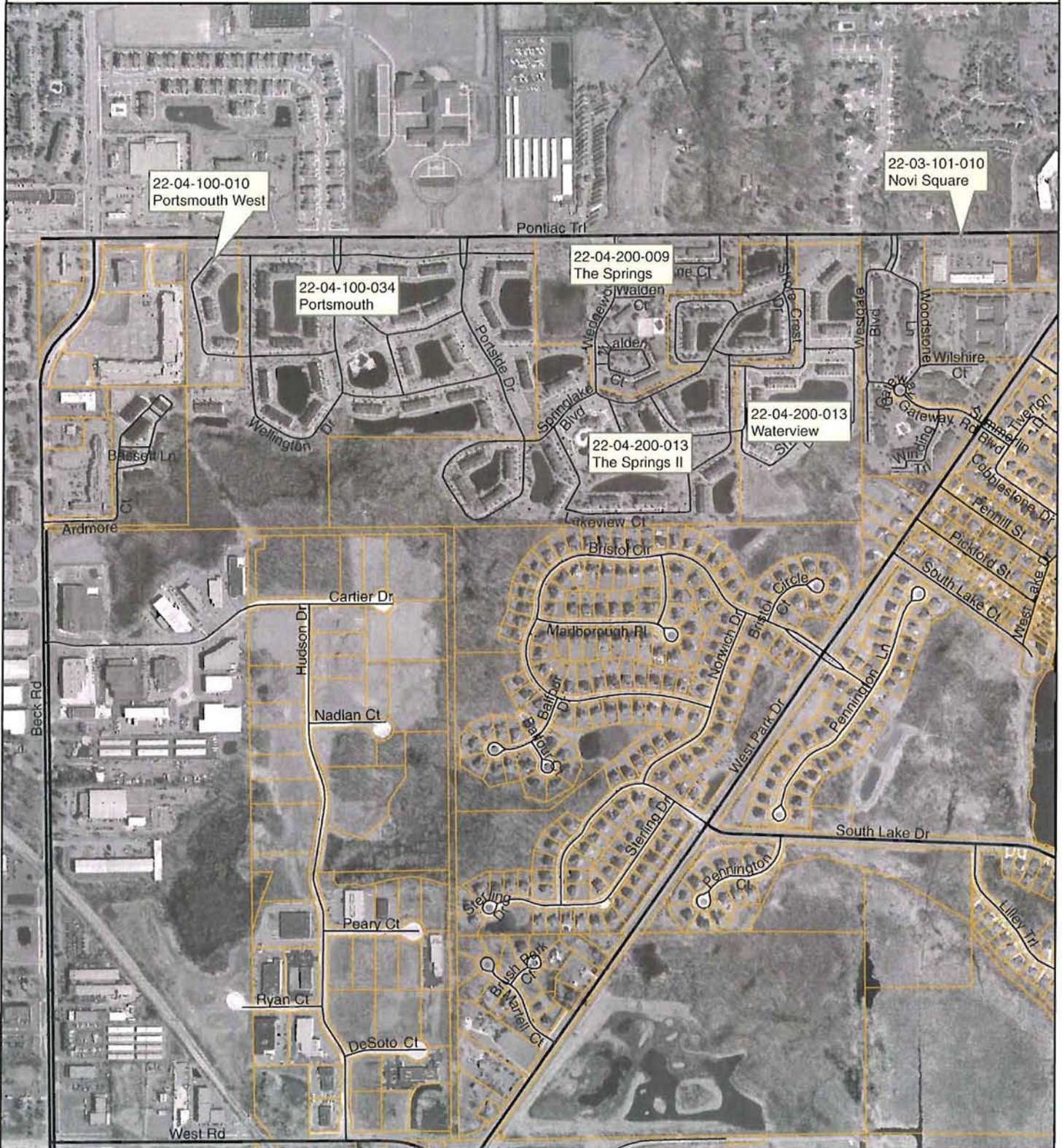
RECOMMENDED ACTION: Approval of form of 13-foot permanent easement for water main improvements along Pontiac Trail between West Park Drive and Beck Road (part of Parcel No. 22-03-101-010), from Kayne Properties, LLC, for the sum of \$9,100, including authorization for entry into a modified form of monitoring agreement and debt payment agreement.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

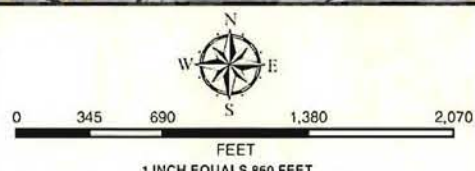
	1	2	Y	N
Council Member Mutch				
Council Member Crawford				
Council Member Staudt				

Properties Along Pontiac Trail Water Main Route

Map Publication Date: October 29, 2007



CITY OF NOVI
 GEOGRAPHIC INFORMATION SYSTEMS OFFICE
 DEPARTMENT OF INFORMATION TECHNOLOGY
 NOVI CITY HALL/CIVIC CENTER
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-3279
 WWW.CITYOFNOVI.ORG
 Map Author: Brian Coburn



MAP INTERPRETATION DISCLAIMER
 This map is neither a legally recorded map nor a survey and is not intended to be used as one. This map is a compilation of records, information, and data located in various city, county, state, and federal offices and other sources regarding the area shown, and is to be used for reference purposes only. The City of Novi makes no warranty, express or implied, that the Geographic Information Systems (GIS) Data used to prepare this map are error free, and the City of Novi does not represent that the GIS Data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. Official records should be used as a primary information source for verification of the information provided on these pages.

Project Overview

Pontiac Trail Water Main Extension



CITY OF NOVI
 ENGINEERING DIVISION
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-0454
 MAP AUTHOR: Brian Coburn, P.E.



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.

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WATER SYSTEM EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Kayne Properties, LLC, a Michigan limited liability company, whose address is 240 Chesterfield Road, Bloomfield Hills, Michigan 48304, (hereinafter referred to as "Grantor"), being title holder to the following described parcel of land, to-wit:

[See attached and incorporated Exhibit A]

Tax Identification Number: 50-22-03-101-010

for and in consideration of One (\$1.00) Dollar, receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile, Novi, Michigan 48375, (hereinafter referred to as "Grantee"), a non-exclusive perpetual easement for a water main, over, upon, across, in, through, and under the following described real property to-wit:

[See attached and incorporated Exhibit B]

and to enter upon sufficient land adjacent to said water main easement for the purpose of exercising the rights and privileges granted herein.

Grantee may install, repair, replace, improve, modify and maintain water main lines, and all necessary appurtenances thereto, within the easement herein granted.

Grantor agrees not to build or to convey to others permission to build any permanent structures on, over, across, in, through, or under the above-described easement, except that subject to Grantee's approval as part of an approved site plan, the Grantor may construct and/or install surface improvements to the property, including paved driveways, parking and/or walkways; landscaping; utilities and/or similar improvements, which improvements do not interfere with use, operation, maintenance, repair and replacement of the water main in the easement areas shown on the attached and incorporated Exhibit B.

This instrument shall run with the land first described above and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned Grantor has affixed _____ signature this day of

_____, 20__.

GRANTOR:

KAYNE PROPERTIES, LLC, a Michigan limited liability company

By: _____, Its:

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

On this _____ day of _____, 20__, before me, personally appeared the above named _____, the _____ of _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as _____ free act and deed.

Notary Public,
 County, MI
My commission expires:

THIS INSTRUMENT DRAFTED BY AND
WHEN RECORDED, RETURN COPY TO:
Elizabeth M. Kudla, Esq.
30903 Northwestern Highway
Farmington Hills, MI 48334

CONSENT TO EASEMENT

As the holder of a mortgagee interest in and to the property referenced in the Water System Easement, dated _____, 20__, attached hereto and incorporated as Exhibit A, whereby _____ 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 _____ day of _____, 20__.

WITNESSES:

)

_____, a
Michigan _____

By: _____
(Print Name: _____)

Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing Consent to Easement was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a Michigan _____.

Notary Public County, MI
My commission expires:

EASEMENT


PARCEL NO.: 50-22-03-101-010
PROPERTY OWNER: KAYNE PROPERTIES LLC
240 CHESTERFIELD ROAD
BLOOMFIELD HILLS, MI 48304

PROPERTY DESCRIPTION:

PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 3, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT A POINT DISTANT SOUTH 89 DEGREES 55 MINUTES 00 SECONDS EAST 418.84 FEET FROM THE NORTHWEST SECTION CORNER; THENCE SOUTH 89 DEGREES 55 MINUTES 00 SECONDS EAST 558.78 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 00 SECONDS WEST 373.65 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 00 SECONDS WEST 558.78 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 00 SECONDS EAST 373.65 FEET TO THE POINT OF BEGINNING.

EXHIBIT A
PONTIAC TRAIL WATERMAIN

10/24/06

 engineers scientists architects constructors	City of Novi Oakland County, Michigan		PROJECT NO. G08201CD
	Easement Parcel No. 50-22-03-101-010		FIGURE NO. 1 of 1

EASEMENT

PERMANENT EASEMENT DESCRIPTION:

A PERMANENT EASEMENT FOR WATERMAIN DESCRIBED AS:

THE SOUTH 13 FEET OF THE NORTH 46 FEET OF SUBJECT PARCEL, PARALLEL WITH THE NORTH SECTION LINE OF SECTION 3, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN.

SAID PERMANENT EASEMENT CONTAINS 0.17 ACRES, MORE OR LESS.

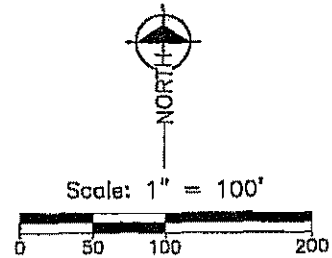
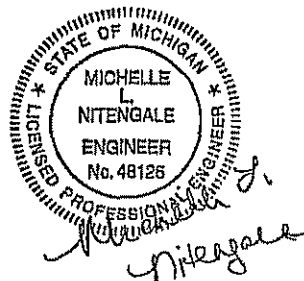
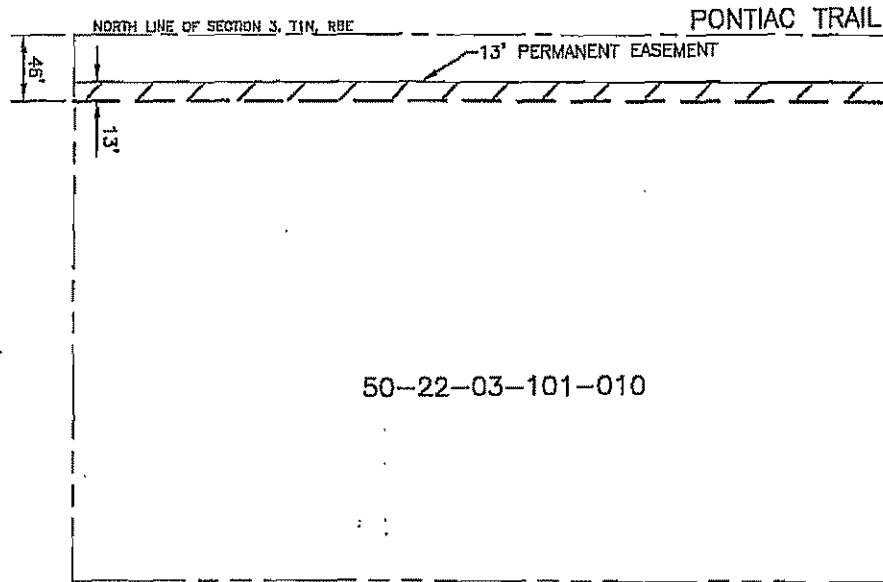


EXHIBIT B
PONTIAC TRAIL WATERMAIN

10/24/06

	engineers scientists architects constructors	City of Novi Oakland County, Michigan	
		Easement Parcel No. 50-22-03-101-010	PROJECT NO. G08201GD FIGURE NO. 1 of 1

MONITORING AGREEMENT

THIS AGREEMENT made this ____ day of _____, ____ by and between the **City of Novi**, a Michigan municipal corporation and _____,
(property owner's legal corporate name & address)

(hereinafter referred to as **USER**) as follows:

WHEREAS, the **City of Novi** has adopted by resolution unit factors for water and sewer debt service charges, connection charges, availability charges, and lateral availability fees; and

WHEREAS, the condition marked below exists:

- The user believes that the unit factor is unfair to the **USER**, or
- The **City of Novi's** unit factor chart does not show this type of user; and/or
- Addition, or change in operation

WHEREAS, pursuant to Resolution dated February 24, 1992 the **USER** has the option of entering into this agreement if he believes that said unit factor, adopted by resolution is unfair; or the **City of Novi** may request the user to enter into an agreement if there is no unit factor for said type of user; or a building addition, or change in operation is taking place.

NOW, THEREFORE, it is agreed as follows:

1. That the **City of Novi** will assign 54.00 estimated tap unit(s) to Novi Square Shopping Center at 45077 W. Pontiac Trail, Novi, Michigan 48375.
2. That the **City of Novi**, at the sole expense of the **USER**, will install a meter for measuring the water used by the **USER**. The type of meter shall be in the sole discretion of the **City of Novi's** Water Department Superintendent.
3. That when three (3) full years of meter readings have been obtained, or at a sooner time if the **City of Novi** requests it, the **City** will re-assess the tap units assigned to said facility. The assignment will be based on the four highest consecutive quarters.
4. That the number of tap units will be based upon the equivalent of 115,000 gallons per year for one tap unit or whatever method the **City of Novi** has adopted by resolution for determining the basis of one tap unit at the time the year has expired or at such time the **City** has taken the meter reading for re-assessing the tap units assigned to said facility.

5. That the USER agrees to pay for the determined tap unit difference at such time notice is given to the USER by the City of Novi. The tap unit cost shall be in accordance with the ordinance of the City of Novi in such case made and provided for the use of such water and sewer facility and/or the resolution adopted pursuant to said ordinance. If the re-assessment results in reduction to the number of tap units paid by the USER, the City of Novi will refund to the USER the difference at a cost in accordance with the ordinance of the City of Novi in such case made and provided for the use of such water and sewer facility and/or the resolution adopted pursuant to said ordinance.
6. That this obligation to pay the determined tap unit difference shall be a lien against the USER'S property as provided in Section 21, Act 94, of the Public Acts of Michigan, 1933, as amended.
7. That anything herein to the contrary notwithstanding, the City of Novi shall have the right to re-meter the water so as to re-assess the tap units assigned to said facility on the same terms and conditions as provided in this Agreement if the USER or the use of the aforesaid property is changed subsequent to the re-assessment of the tap units assigned to said facility.
8. This Agreement contains the entire agreement of the parties, and no statement, promises, or inducements made by either party that is not contained in this written contract shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.
9. It is expressly understood and agreed by the parties that this Agreement, and all stipulations and provisions contained herein, shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.
10. This Agreement shall be recorded with the Oakland County Register of Deeds.
11. The cost for recording with the Register of Deeds shall be collected from the USER.

CITY OF NOVI, a Michigan municipal corporation,

 David B. Landry
 It's: Mayor

 Maryanne Cornelius
 It's: City Clerk

STATE OF MICHIGAN)
)SS
 COUNTY OF)

On this ____ day of _____, _____, before me personally appeared David B. Landry and Maryanne Cornelius, to me personally known, who being by me sworn each for himself/herself say that they are respectively the Mayor and City Clerk of the City of Novi, a Municipal Corporation, which executed the within instrument by authority of the City Council and acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____, Notary Public
 _____ County, MI
 My Commission Expires: _____

User - Corporation Name

By: _____, President

By: _____, Secretary

OR,

By: _____, Owner

STATE OF MICHIGAN)
)SS
COUNTY OF)

On this ____ day of _____, _____, before me personally appeared _____ and _____, to me personally known, who by me sworn each for himself/herself say that they are respectively the President and Secretary of the _____, which executed the within instrument by authority of the _____ and acknowledge said instrument to be the free act and deed of said _____.

_____, Notary Public
_____, County, MI
My Commission Expires: _____

OR,

STATE OF MICHIGAN)
)SS
COUNTY OF)

ON this ____ day of _____, _____, before me personally appeared _____, to me personally known, who by me sworn for himself/herself say that he/she is the owner of the _____, and acknowledge said executed instrument within to be the free act and deed of _____.

_____, Notary Public
_____, County, MI
My Commission Expires: _____

Sidewell Number: 50-22-03-101-010

Parcel Description:

T1N, R8E, SEC 3 PART OF NW FRC 1/4 BEG AT PT DIST S 89-55-00 E 418.84 FT FROM NW SEC COR, TH S 89-55-00 E 558.78 FT, TH S 00-05-00 W 373.65 FT, TH N 89-55-00 W 558.78 FT, TH N 00-05-00 E 373.65 FT TO BEG 4.79 A

Drafted By & Return To:
Tina Glenn
City of Novi-Water Department
45175 W. Ten Mile Rd.
Novi, Michigan 48375

**CITY OF NOVI
DEBT SERVICE PAYMENT AGREEMENT
INSTALLMENT CONTRACT**

Notice to the user: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. You are entitled to a partial return of the finance charge if you prepay the balance.

This agreement made this ____ day of _____, _____ by and between the City of Novi, a municipal corporation, and _____ (hereinafter referred to as User), as follows:

Whereas, the City of Novi has adopted the Oakland County Department of Public Works Unit Factor Chart for the method of establishing unit factors for water and sewer debt charges, and connection charges; and,

Whereas, the City of Novi Code of Ordinances, Sections 34-76 and 34-145 provides that the owner of certain property may elect to pay one fifth (1/5) of service charges, connection charges, debt service charges, lateral availability fees and availability connection charges (with exception of those imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the City is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of such charges and fees in twenty (20) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay, the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes.

Whereas, the User has the option of entering into this agreement if he elects to pay the above said service charges over four years;

Now therefore, it is agreed as follows:

1. That the City of Novi will assign 54.00 tap unit(s) to Novi Square Shopping Center whose address is 45077 W. Pontiac Trail, Novi, Michigan 48375.
2. The User hereby agrees to pay for the determined service charges as detailed on page 6 of this document.
3. The User hereby agrees to pay said installments by the due date set on each quarterly bill issued by the City of Novi, and acknowledges that failure to make said payment will cause the full amount to become due and payable. Late payments will result in a penalty of ten percent (10%).
4. The User has the option to pay said service charges in full at any time, provided interest is paid to date on the installment balance. Upon the User's request, the City of Novi will make available for examination by User a statement or table showing how the partial refund of the time price charge is to be computed if any balance of the contract should be prepaid.
5. This obligation to pay the said service charges shall be a lien against the User's property, as provided in Section 21, Act 94, of the Public Acts of Michigan, 1933, as amended.

User -- Corporation Name

Authorized Signature

Title

STATE OF MICHIGAN)

COUNTY OF)SS
)

ON this _____ day of _____, _____ before me personally appeared _____, to me personally known, who by me sworn for himself/herself say that he/she is the owner of the, _____ and acknowledge said executed instrument within to be the free act and deed of _____.

, Notary Public

_____ County, MI

My Commission Expires: _____

-or-

User - Corporation Name

Authorized Signature

Title

Authorized Signature

Title

STATE OF MICHIGAN)
)SS
COUNTY OF)

ON this _____ day of _____, _____ before me personally appeared _____, and _____, to me personally known, who by me worn each for himself/herself say that they are respectively the _____ and _____ of the above named _____, which executed the foregoing instrument by authority of the _____ and acknowledge said instrument to be the free act and deed of said _____.

, Notary Public

_____ County, MI

My Commission Expires: _____

CITY OF NOVI, a Michigan municipal corporation,

By: _____
David B. Landry
It's: Mayor

By: _____
Maryanne Cornelius
It's: City Clerk

STATE OF MICHIGAN)
)SS
COUNTY OF)

ON this _____ day of _____, _____ before me personally appeared **David B. Landry and Maryanne Cornelius** to me personally known, Who being by me sworn each for himself/herself say that they are respectively the **Mayor and Clerk** of the City of Novi, a Municipal Corporation, which executed the within instrument by authority of the City Council and acknowledge said instrument to be the free act and deed of said Municipal Corporation.

, Notary Public

_____ County, MI

My Commission Expires: _____

Sidewell Number: 50-22-03-204-033

Parcel Description:

T1N, R8E, SEC 3 PART OF NW FRC 1/4 BEG AT PT DIST S 89-55-00 E 418.84 FT FROM NW SEC COR, TH S 89-55-00 E 558.78 FT, TH S 00-05-00 W 373.65 FT, TH N 89-55-00 W 558.78 FT, TH N 00-05-00 E 373.65 FT TO BEG 4.79 A

Installment Schedule

**City of Novi
Installment Payment Schedule
for
Novi Square**

TOTAL CHARGE \$ 99,900.00
 1/5 DOWN 19,980.00
 AMOUNT TO BE FINANCED \$ 79,920.00
 RATE 8.0%
 TERM IN YEARS 5
 PAYMENT \$4,887.64

Invoice Quarter Ending	PAYMENT NUMBER	INTEREST	PRINCIPAL	TOTAL PAYMENT	UNPAID BALANCE
	1	\$ 1,598.40	\$ 3,289.24	\$ 4,887.64	\$ 76,630.76
	2	1,532.62	3,355.02	4,887.64	73,275.74
	3	1,465.51	3,422.13	4,887.64	69,853.61
	4	1,397.07	3,490.57	4,887.64	66,363.04
	5	1,327.26	3,560.38	4,887.64	62,802.66
	6	1,256.05	3,631.59	4,887.64	59,171.07
	7	1,183.42	3,704.22	4,887.64	55,466.85
	8	1,109.34	3,778.30	4,887.64	51,688.55
	9	1,033.77	3,853.87	4,887.64	47,834.68
	10	956.69	3,930.95	4,887.64	43,903.73
	11	878.07	4,009.57	4,887.64	39,894.16
	12	797.88	4,089.76	4,887.64	35,804.40
	13	716.09	4,171.55	4,887.64	31,632.85
	14	632.66	4,254.98	4,887.64	27,377.87
	15	547.56	4,340.08	4,887.64	23,037.79
	16	460.76	4,426.88	4,887.64	18,610.91
	17	372.22	4,515.42	4,887.64	14,095.49
	18	281.91	4,605.73	4,887.64	9,489.76
	19	189.80	4,697.84	4,887.64	4,791.92
	20	95.84	4,791.80	4,887.64	0.12
		<u>\$ 17,832.92</u>	<u>\$ 79,919.88</u>	<u>\$ 97,752.80</u>	