

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item N
September 28, 2009

SUBJECT: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Taco Bell of America, Inc., for the Taco Bell at 21090 Haggerty Road on the east side of Haggerty Road north of Eight Mile Road in Section 36 (parcel 22-36-477-025).

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

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Taco Bell of America, Inc. has requested approval of the Storm Drainage Facility Maintenance Easement Agreement for the Taco Bell site, located at 21090 Haggerty Road (on the east side of Haggerty Road north of Eight Mile Road), Section 36 of the City of Novi. The enclosed Agreement has been favorably reviewed by the City Attorney (Beth Kudla's September 1, 2009 letter, attached) and is recommended for approval.

RECOMMENDED ACTION: Approval of a Storm Drainage Facility Maintenance Easement Agreement from Taco Bell of America, Inc. for the Taco Bell located at 21090 Haggerty Road on the east side of Haggerty Road north of Eight Mile Road in Section 36 (parcel 22-36-477-025).

	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				

September 1, 2009

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

Elizabeth M. Kudla
Direct: 248-539-2846
bkudl1@secrestwardle.com

Rob Hayes, Public Services Director
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

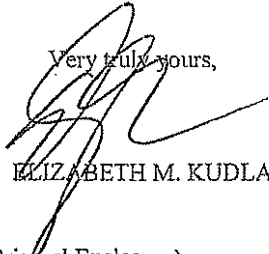
Re: **Taco Bell – SP07-37**
Storm Drainage Facility Maintenance Easement Agreement
Our File No. 660159.NOVI

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the Storm Drainage Facility Maintenance Easement Agreement for Taco Bell in Section 36 of the City. The City's Consulting Engineer has 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.

Very truly yours,



ELIZABETH M. KUDLA

EMK
Enclosure

C: Maryanne Cornelius, Clerk (w/Original Enclosure)
Marina Neumaier, Assistant Finance Director (w/Enclosure)
Charles Boulard, Community Development Director (w/Enclosure)
Barb McBeth, Deputy Community Development Director (w/Enclosure)
Aaron Staup, Construction Engineering Coordinator (w/Enclosure)
Taylor Reynolds and Byron Hanson, Spalding DeDecker (w/Enclosure)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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STORM DRAINAGE FACILITY EASEMENT & MAINTENANCE AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter "Agreement") is made this 3rd day of June, 2009, by and between the City of Novi, a municipal corporation, with principal offices located at 45175 W Ten Mile Road, Novi, Michigan 48375, (hereinafter "City") and Taco Bell of America, Inc., a Delaware Corporation, with principal offices located at c/o Yumi Brands Real Estate, Title Dept. 17901 Von Karman, Irvine, California 92614 (hereinafter "Proprietor").

RECITALS:

1. The Proprietor is developing certain property located in the City of Novi, Oakland County, Michigan as a restaurant ("Development") as more particularly described in Exhibit A attached hereto.
2. The Development, shall contain certain storm drainage facilities including but limited to, a sediment basin, for the collection and treatment of storm water from the Property in accordance with all approved plans, and all applicable ordinances, laws and regulations.

NOW, THEREFORE the Proprietor hereby covenants and agrees that the Proprietor shall, at its own expense, perpetually preserve, maintain, and repair all storm drainage facilities to insure that the same continue to function as intended. The Proprietor shall establish a regular and systematic program of maintenance (the "Schedule of Maintenance") for such facilities and areas to ensure that the physical condition and intended function of such areas and facilities shall be preserved and maintained. The Schedule of Maintenance and the estimated cost for maintenance and repairs for the first three (3) years are described in the attached Exhibit B.

Proprietor shall maintain a log of all inspections and maintenance activities and make the log available to City personnel as needed.

In the event that the Proprietor 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 system in reasonable order and condition, the City may serve written notice upon the Proprietor 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 Proprietor an opportunity to be heard as to why the City should 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 corrected measures as reasonably found by the City to be appropriate or necessary with respect to the detention/sedimentation basin within the Easement Area described and depicted in Exhibit C, 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 the Proprietor within thirty (30) days of a billing to the Proprietor. 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 Proprietor, and, in such event, the Proprietor shall pay all court cost and reasonable attorney fees incurred by the City in connection with such suit.

This agreement shall bind the Proprietor, its successors and assigns, and any person or entity claiming any right or ownership in the development.

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.

IN WITNESS WHEREOF the Proprietor and City have executed this Agreement on the day and year first above written.

Signatures provided on following pages.

Proprietor:

Taco Bell of America, Inc.,
a Delaware Corporation

By:  _____

Printed Name: **LAURENCE GERICH**
Assistant Secretary

Title: _____

Witness #1:

By:  _____

Printed Name: Amy Hu

Witness #2:

By:  _____

Printed Name: Jason Oviatt

STATE OF _____)

) SS:

COUNTY OF _____)

The foregoing instrument was subscribed and sworn to before me by _____ as
_____ of Taco Bell of America, Inc., and by _____ and
_____ as witnesses, this _____ day of _____, 2009.

My commission expires: _____

Notary Public

See attached

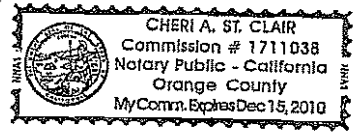
State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 3rd day of June, 2009, by Laurence Gerich, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(seal)

Signature Cheri A. StClair



CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE OFFICER(S) _____
TITLE(S) _____
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER - Assistant Secretary

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Taco Bell of America, Inc.
Store # 3783 Novi, MI

<u>Document Date</u>	<u>Number of Pages</u>
June 3, 2009	11

Title or Type of Document
Storm Drainage Facility Easement & Maintenance Agreement

City of Novi, Michigan,
a Michigan municipal corporation

By: _____

Printed Name: _____

Title: _____

Witness #1:

By: _____

Printed Name: _____

Witness #2:

By: _____

Printed Name: _____

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

The foregoing instrument was subscribed and sworn to before me by _____ as
_____ of the City of Novi, Michigan, a Michigan municipal corporation, and by
_____ and _____ as witnesses, this ____ day of _____, 2009.

My commission expires: _____

Notary Public

THIS INSTRUMENT DRAFTED BY:
Taco Bell of America, Inc.
c/o Yum! Brands Real Estate, Title Dept
17901 Von Karman
Irvine, CA 92614

AND WHEN RECORDED RETURN TO:
Maryanne Cornelius, City Clerk
City of Novi
45175 West Ten Mile Road
Novi, MI 48375

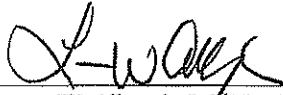
208102
July 1, 2008

Proposed Easement Descriptions
for
Taco Bell - Novi, Michigan

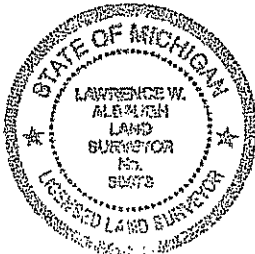
PARENT PARCEL DESCRIPTION

Unit 10B of Orchard Hill Place, Oakland County Condominium Plan No. 434, as recorded in Liber 9231 Page 252, Oakland County records, being part of the Southeast 1/4 of Section 36, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; more particularly described as: Commencing at the Southeast corner of said Section 36; thence North 01° 52' 04" West 858.83 feet, along the east line of said Section 36, to a point on the westerly line of I-96, said point being the Point of Beginning; thence continuing along the east line of said Section 36, said line also being the westerly line of I-96, North 01° 52' 04" West 15.80 feet; thence North 73° 36' 18" West 174.09 feet to a point of curve; thence 127.92 feet along an arc of a curve to the right, said curve having a radius of 100.00 feet, central angle of 73° 17' 39" and chord bearing and distance of North 36° 57' 28" West 119.38 feet to a point on said curve, said point being on the easterly line of Haggerty Road; thence South 31° 07' 56" West 226.64 feet along the easterly line of Haggerty Road; thence South 73° 36' 18" East 255.12 feet to the westerly line of I-96; thence North 46° 35' 20" East 153.79 feet along the westerly line of I-96 to the point of beginning.

NOTE: This description was taken from ALTA/ACSM Land Title Survey prepared by Stellar Consulting Services, Inc. as Job#: 0712, dated June 27, 2007.



Lawrence W. Albaugh, P.S. No. 30073
Williams & Works, Inc.
549 Ottawa Avenue NW
Grand Rapids, Michigan 49503



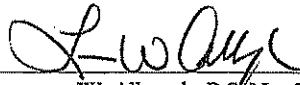
208102
July 1, 2008

Proposed Easement Descriptions
for
Taco Bell - Novi, Michigan

STORM DRAINAGE FACILITY MAINTENANCE AGREEMENT (ACCESS EASEMENT)

A 20.00 foot wide access easement in Unit 10B of Orchard Hill Place, Oakland County Condominium Plan No. 434, as recorded in Liber 9231 Page 252, Oakland County records, being part of the Southeast 1/4 of Section 36, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; the centerline of which is described as: Commencing at the Southeast corner of said Section 36; thence North 01° 52' 04" West 874.63 feet along the easterly line of said Section 36; thence North 73° 36' 18" West 174.09 feet; thence Northwesterly 127.92 feet along a 100.00 foot radius curve to the right, the chord of which bears North 36° 57' 28" West 119.38 feet to a point on the southeasterly right of way line of Haggerty Road (120 feet wide); thence South 31° 07' 56" West 113.32 feet along said right of way line to THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 58° 52' 04" East 33.00 feet; thence South 16° 23' 42" West 62.70 feet; thence South 75° 32' 43" East 166.35 feet to the place of ending of this centerline description.

The side lines of said 20.00 foot wide easement are to be extended or shortened to meet at angle points and to terminate at the southeasterly right of way line of said Haggerty Road.



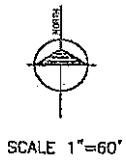
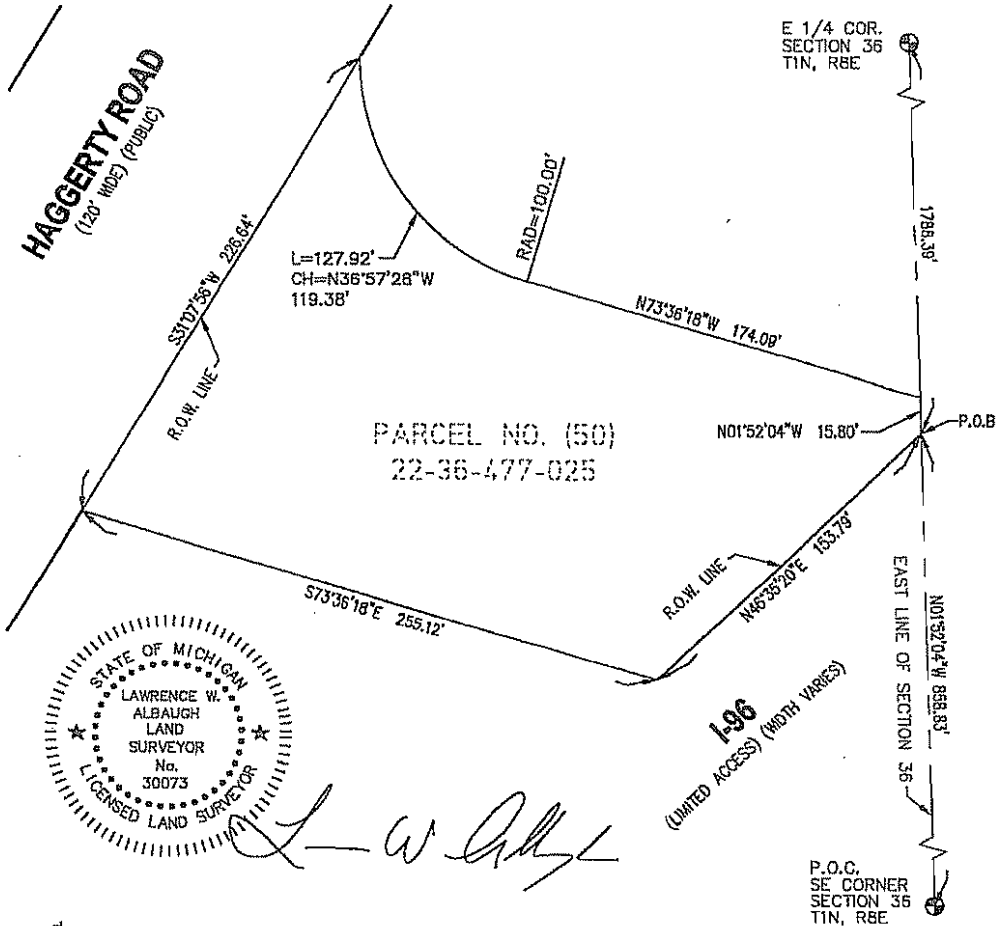
Lawrence W. Albaugh, P.S. No. 30073
Williams & Works, Inc.
549 Ottawa Avenue NW
Grand Rapids, Michigan 49503



EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

UNIT 10B OF ORCHARD HILL PLACE, OAKLAND COUNTY CONDOMINIUM PLAN NO. 434, AS RECORDED IN LIBER 9231 PAGE 252, OAKLAND COUNTY RECORDS, BEING A PART OF THE SOUTHEAST 1/4 OF SECTION 36, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE NORTH 01° 52' 04" WEST 858.83 FEET, ALONG THE EAST LINE OF SAID SECTION 36, TO A POINT ON THE WESTERLY LINE OF I-96, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE EAST LINE OF SAID SECTION 36, SAID LINE ALSO BEING THE WESTERLY LINE OF I-96, NORTH 01° 52' 04" WEST 15.80 FEET; THENCE NORTH 73° 36' 18" WEST 174.09 FEET TO A POINT OF CURVE; THENCE 127.92 FEET ALONG AN ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 100.00 FEET, CENTRAL ANGLE OF 73° 17' 39" AND CHORD BEARING AND DISTANCE OF NORTH 36° 57' 28" WEST 119.38 FEET TO A POINT ON SAID CURVE, SAID POINT BEING ON THE EASTERLY LINE OF HAGGERTY ROAD; THENCE SOUTH 31° 07' 56" WEST 226.64 FEET ALONG THE EASTERLY LINE OF HAGGERTY ROAD; THENCE SOUTH 73° 36' 18" EAST 255.12 FEET TO THE WESTERLY LINE OF I-96; THENCE NORTH 46° 35' 20" EAST 153.79 FEET ALONG THE WESTERLY LINE OF I-96 TO THE POINT OF BEGINNING.



DRAWING 208102-A
 NOTE: THIS MAP WAS MADE USING BOUNDARY INFORMATION CONTAINED IN THE ALTA SURVEY PREPARED BY STELLAR CONSULTING SERVICES, INC. AS JOB#: 0712, DATED JUNE 27, 2007.

Williams & Works
 engineers . planners . surveyors a tradition of service

616.224.1500 phone . 616.224.1501 facsimile
 549 Ottawa Ave NW . Grand Rapids, MI 49503

EXHIBIT B – STORM SEWER MAINTENANCE SCHEDULE

1. Maintenance Schedule of Storm Water Sedimentation Basin.
Address: 21090 Haggerty Road, Novi, Michigan
2. The Proprietor agrees to notify any subsequent property purchaser of this agreement.

The operation of the Contech structure and underground pipes shall be monitored to verify that they are performing as intended and will be repaired or modified as required to insure that the system operates as intended and as required.

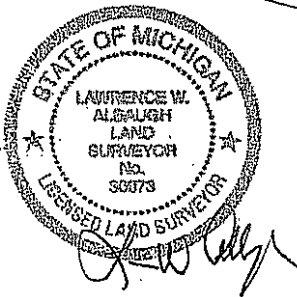
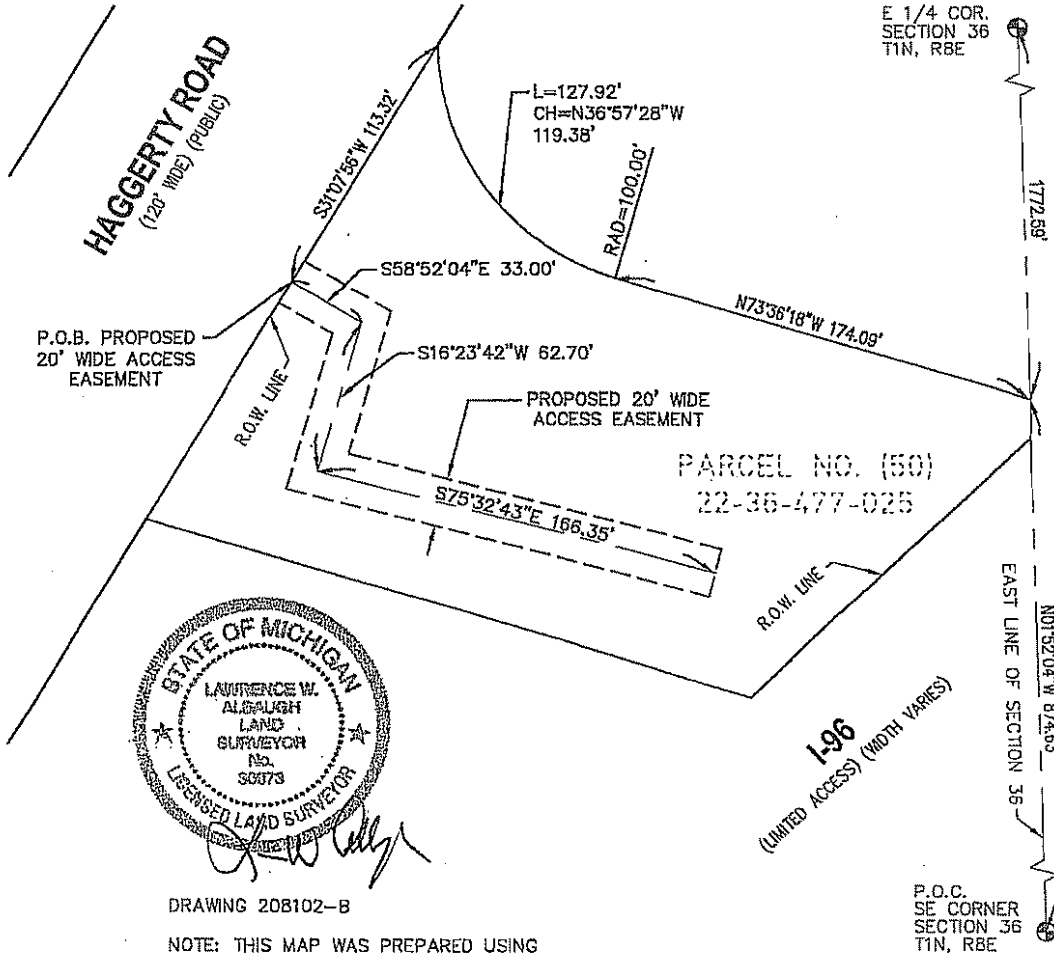
- A. Maintenance of storm water collection system consists of the following items, which are to be done twice per year.
 1. Clean the cover of all catch basins and inlets.
 2. Check the depth of accumulated sediment in each storm structure and remove the sediment if it is 12 or more inches deep.
 3. If while checking the sediment in the storm structure, it becomes apparent that the sediment has entered the connecting pipes, the pipes shall be jetted to remove the sediment.
 4. If any settling around the storm structures or along the route of the pipes is evident, the structures and pipes shall be checked for open joints and cracks which, if found, shall be repaired.
- B. Maintenance of Contech structure, inlet control structure and pipes must be performed at least twice per year as follows:
 1. The Contech structure is to be inspected and cleaned of any accumulated debris and sediment in accordance with the manufacture's recommended schedule.
 2. The inlet control structure and outlet pipes shall be maintained in accordance with maintenance schedule for the collection system as mentioned above.
 3. The annual estimated cost for maintenance and repairs for the first three (3) years is \$1,000.00 per year.

EXHIBIT "C"

LEGAL DESCRIPTION OF PROPOSED ACCESS EASEMENT

A 20.00 foot wide access easement in Unit 10B of Orchard Hill Place, Oakland County Condominium Plan No. 434, as recorded in Liber 9231 Page 252, Oakland County records, being part of the Southeast 1/4 of Section 36, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; the centerline of which is described as: Commencing at the Southeast corner of said Section 36; thence North 01° 52' 04" West 874.63 feet along the easterly line of said Section 36; thence North 73° 36' 18" West 174.09 feet; thence Northwesterly 127.92 feet along a 100.00 foot radius curve to the right, the chord of which bears North 36° 57' 28" West 119.38 feet to a point on the southeasterly right of way line of Haggerty Road (120 feet wide); thence South 31° 07' 56" West 113.32 feet along said right of way line to THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence South 58° 52' 04" East 33.00 feet; thence South 16° 23' 42" West 62.70 feet; thence South 75° 32' 43" East 166.35 feet to the place of ending of this centerline description.

The side lines of said 20.00 foot wide easement are to be extended or shortened to meet at angle points and to terminate at the southeasterly right of way line of said Haggerty Road.



DRAWING 208102-B

NOTE: THIS MAP WAS PREPARED USING BOUNDARY INFORMATION CONTAINED IN THE ALTA SURVEY PREPARED BY STELLAR CONSULTING SERVICES, INC. AS JOB NUMBER 0712, DATED JUNE 27, 2007. THE EASEMENT HEREIN DESCRIBED IS SHOWN FROM THE RIGHT OF WAY AND EASEMENT PLAN PREPARED BY HH ENGINEERING LTD. AS JOB NUMBER C0725, DATED AUGUST 27 AND LAST REVISED MAY 13, 2008.



SCALE 1"=60'

Williams & Works
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549 Ottawa Ave NW . Grand Rapids, MI 49503

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



Taco Bell



0 25 50 100 150 200
Feet

