



CITY OF NOVI CITY COUNCIL
OCTOBER 7, 2019

SUBJECT: Approval of a license agreement for improvements within the Old Novi Road right-of-way including decorative fences, a detention pond buffer, benches, and a commemorative plaque.

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division

BACKGROUND INFORMATION: Robertson Brothers, the Developer of the 20-unit, single condominium project, is proposing encroachments into the Old Novi Road right-of-way for landscape improvements. These improvements will include additional yard space, a detention basin buffer, benches, and a commemorative plaque.

The additional yard space will be achieved by extending landscaping and decorative fences 15 feet into the Old Novi Road right-of-way along the west side of the road. For parcels 11 and 18 along the east side of Old Novi Road, landscaping and decorative fences will extend 5 feet into the right-of-way.

According to the Engineering Design Manual, a 25-foot wide vegetated detention basin buffer is required for all residential developments. Due to the size of the basin and limited space for the basin's construction, a portion of this buffer will overlap with the Old Novi Road right-of-way.

The commemorative plaque will reference the historic home that was recently torn down where this development is proposed. Benches will be placed near the plaque along the sidewalk abutting the east side of Old Novi Road.

The License Agreement specifies the maintenance of the landscaping improvements in the right-of-way is the responsibility of the Developer and/or the Association. Nothing in the License Agreement precludes the City from using the licensed premises for typical right-of-way purposes, such as road widening and utility installation, maintenance and replacement.

The License Agreement has been review by staff and the City Attorney (Beth Saarela, September 10, 2019), and is being presented to City Council for consideration.

RECOMMENDED ACTION: Approval of a license agreement for improvements within the Old Novi Road right-of-way including decorative fences, a detention pond buffer, benches, and a commemorative plaque.

Lakeview License Agreement

Location Map



25-foot wide encroachment into ROW for detention basin buffer

5-foot wide encroachment into ROW for landscaping and decorative fences

Encroachment into ROW for benches and commemorative plaque

15-foot wide encroachment into ROW for landscaping and decorative fences

Map Author: Kate Richardson
 Date: 9/25/2019
 Project: Lakeview License Agreement
 Version: 1.0

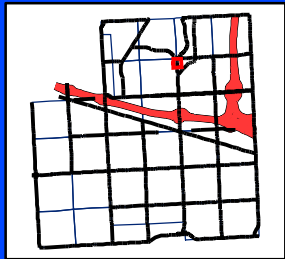
Amended By:
 Date:
 Department:

MAP INTERPRETATION NOTICE

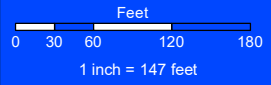
Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 332 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Legend

— Major Roads	Right of Way
— Minor Roads	Green Dedicated
Red Subject Parcels	Yellow Prescriptive
	Pink Private



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



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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

September 10, 2019

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

**RE: Lakeview JSP 18-0016
License Agreement for Improvements in ROW**

Dear Mr. Herczeg:

The PRO Agreement for the Lakeview residential developer provides for the developer to construct and maintain certain improvements within the Old Novi Road right-of-way, including, but not limited to decorative fences, detention pond buffer, benches and a commemorative plaque. We have prepared the enclosed License Agreement, which has been commented on and modified by the Developer. The standard terms and conditions of the License Agreement are consistent with the City's License Agreement form and would permit the City to terminate the License Agreement in the event the City requires the right-of-way for standard right-of-way purposes. The License Agreement does not impact the City's rights or obligations to maintain the right-of-way in the usual manner. The Developer and/or Association are responsible for ongoing maintenance of the improvements. The Developer and Association will be required to insure the area and include the City as an additional insured. The original License Agreement is acceptable as provided, subject to approval of the Exhibits by the City's Engineering Consultant.

The License Agreement may be placed on an upcoming City Council Agenda for approval. Once executed, the original License Agreement should be recorded with the Oakland County Register of Deeds by the City Clerk's Office.

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
September 10, 2019
Page 2

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

EKS

Enclosure

- C: Cortney Hanson, Clerk (w/Original Enclosure)
Charles Boulard, Community Development Director (w/Enclosure)
Barb McBeth, City Planner (w/Enclosure)
Sri Komaragiri, Planner (w/Enclosure)
Lindsay Bell, Planner (w/Enclosure)
Madeleine Kopko, Planning Assistant (w/Enclosure)
Sarah Marchioni, Community Development Building Project Coordinator (w/Enclosure)
Angie Sosnowski, Community Development Bond Coordinator (w/Enclosure)
Ben Croy, City Engineer (w/Enclosure)
Kate Richardson, Plan Review Engineer (w/Enclosure)
Rebecca Runkel, Staff Engineer (w/Enclosure)
Michael Freckelton/Taylor Reynolds/Ted Meadows, Spalding DeDecker (w/Enclosure)
Sue Troutman, City Clerk's Office (w/Enclosure)
Tim Loughrin, Robertson Brothers Homes (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI**

**LICENSE AGREEMENT FOR USE OF CITY PROPERTY
FOR IMPROVEMENTS
[LAKEVIEW PLANNED REZONING OVERLAY]**

THIS LICENSE AGREEMENT ("Agreement") is made, entered into, and effective this ____ day of _____, 2019, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175, Ten Mile, Novi, Michigan 48375 (the "City"), and Robertson Lakeview, LLC, a Michigan limited liability company, whose address is 6905 Telegraph Rd Ste. 200, Bloomfield Hills, MI 48301 ("Robertson").

RECITALS

- A. Robertson has secured from the City authorization to use an area within the Old Novi Road right-of-way for the installation of landscape improvements, additional yard space, buffer, benches and a commemorative plaque, in connection with the development of a 20-unit, single family condominium (the "Development").
- B. More specifically, the "**Improvements**" include:
 - 1. Landscaping and decorative fences features extending 15 feet into the Old Novi Road Right-of-Way for the parcels along the west side of the road for the purpose of providing front yard space for the homes.
 - 2. Landscaping and decorative fences features extending 5 feet into the Old Novi Road Right-of-Way for the parcels 11 and 18 along the east side of the road for the purpose of providing side yard space for the homes.
 - 3. The encroachment of the stormwater detention pond buffer into the Old Novi Road Right-of-Way.
 - 4. The installation of benches and commemorative plaque in the Old Novi Road Right-of-Way.

C. The locations of the Improvements are depicted on the approved site plan attached as **Exhibit A** (the "Licensed Premises").

D. The approval by the City is subject to several conditions in connection with the use, including long-term perpetual maintenance of the Improvements and execution of this Agreement to use the Licensed Premises;

E. Nothing in this Agreement precludes the City from using the Licensed Premises for typical or usual right-of-way purposes, such as road widening, utility, installation, maintenance and replacement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows, and the City grants a license to Robertson as follows:

1. Grant of License. City hereby grants to Robertson, and its successors, assigns and transferees, a license to construct and maintain, at its sole cost and expense, certain Improvements in the area as depicted and shown on the attached **Exhibit A**, solely for the purpose of installing and maintaining the Improvements, subject to all of the terms and conditions of this Agreement. The Improvements shall be properly maintained in accordance with applicable laws, ordinances, regulations, and rules. The license granted in this Agreement is non-revocable unless the City determines subsequent to the date of this Agreement to convert the Old Novi Road Right-of-Way for use by the public as a public right-of-way.

In the event that Robertson, or its successors, assigns, or transferees, including any Association created to administer the General Common Elements of the Condominium, fails to maintain the Improvements in the condition required by the final approved site plan for the Development, the City may serve written notice upon Robertson or the Association (or other assignee) 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 Robertson or the Association (or other assignee) an opportunity to be heard as to why the City should not proceed with the correction of the deficiency or obligation that 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 City 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 Licensed Premises, or cause its agents or contractors to enter the Licensed Premises and perform such obligation or take such corrective measures as is found by the City in its discretion to be appropriate or necessary with respect to the maintenance of the Improvements, 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 Developer or the Association (or other assignee) within thirty (30) days of a billing to Robertson or Association. 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 billing to the Developer or the Association (or other assignee), all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each unit owner in the Condominium, 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 or Association, and, in such event, the Developer or the Association (or other assignee) shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

It is contemplated by Robertson that the owner of each unit in the Development located adjacent to the Old Novi Road will be assigned the responsibility to maintain, repair and replace that portion of the Improvements located immediately adjacent to the unit and the failure of an individual owner to undertake this maintenance, repair and replacement obligations as required herein shall not constitute a breach hereunder as to balance of Licenses Premises.

2. Terms/Revocation. The term of this Agreement is perpetual; however, this Agreement does not grant Robertson an interest in the Licensed Premises, and as a revocable license, may be terminated or revoked by resolution of the City Council if:

(a) Robertson, or its successors, assigns, or transferees, fails either to construct that portion of the Improvements to be located within the Licensed Premises within six (6) months following the issuance of a certificate of occupancy (temporary or final) for an individual dwelling located on a unit immediately adjacent to Old Novi Road or to remove the Improvements as required below in this Agreement.

(b) Robertson, or its successors and assigns, violates the terms and conditions of this Agreement and license after the notice and cure period as provided for in paragraph 1 above; or

(c) Robertson, or its successors, assigns, or transferees fails to maintain the Improvements in the required condition, as set forth in the approved site plan;

(d) The licensed use by Robertson is determined by the City to materially interfere with the operation and use of the Old Novi Road public road and right-of-way. If the City asserts such interference and right to terminate under this subsection, it shall provide 30 days' written notice to Robertson to allow Robertson (and/or a successor, assign or transferee of Robertson) the opportunity to cure the material interference asserted by City.

3. Indemnification. Robertson, or its successors, assigns, or transferees, shall defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, volunteers, and other persons working on behalf of the City, from and against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and from any and all damages that may be asserted, claimed, or recovered for personal injury, including bodily injury or death and/or property damage, including loss of use thereof, arising out of or in any way connected or associated with this Agreement and the design, construction, maintenance, or use of the Improvements, except for such claims, demands, suits, or loss attributable to or resulting from the negligence or intentional misconduct of the City, its elected and appointed officials, employees, volunteers, and other persons working on behalf of the City, acting in their official capacities. The City shall

provide notice to Robertson within a reasonable time of the receipt of any claim arising under this Agreement or relating to the Improvements.

4. Insurance. Robertson or its successors, assigns or transferees shall secure and maintain during the entire duration of this Agreement the following insurance coverages from a good and reputable company or companies doing business in the State of Michigan:

- A. Workers' Compensation & Employers' Liability Insurance, Michigan Statutory Limits of Liability.
- B. Commercial General Liability Insurance on an occurrence basis with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence and aggregate combined single limit for Personal Injury, Bodily Injury, Property Damage. Coverage shall include extensions for Contractual Liability and Independent Contractors Coverage.
- C. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage shall include all owner vehicles, all non-owned vehicles, and all hired vehicles.
- D. Umbrella Liability Insurance with limits of liability not less than two million dollars (\$2,000,000.00) per occurrence.
- E. All policies of insurance, or endorsements, other than Workers' Compensation & Employers' Liability Insurance, shall name the City as the additional insured as follows: "City of Novi, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities of the City."

5. Right of Access. The City retains the full right of access to the Licensed Premises at any time. Robertson hereby confirms its full and unconditional consent to the City's entry upon, access to and inspection of all areas of the Licensed Premises at any time desired by the City, with or without advance notice. This Agreement does not preclude the City from using the Licensed Premises for typical or usual right-of-way purposes, such as the operation, maintenance and repair of road right-of-way, sidewalks, walkways, and/or utilities.

6. Removal of Improvements. After sixty (60) days prior written notice from the City setting forth its need to convert the use of Old Novi Road for use as a public right-of-way and the failure of any portion of the Improvements to not be removed within that time period, then the City may enter the Licensed Premises and remove the Improvements upon a determination, in its sole discretion, that the Licensed Premises, or any portion of the Licensed Premises, are needed for a public right-of-way purpose, including, but not limited to, road and utility construction, improvements, repairs, or maintenance. Robertson shall not be responsible for any of the costs associated with such removal, including any costs and attorneys' fees incurred by the City in securing such removal.

7. Underground Improvements. Upon completion of the Improvements, Robertson shall provide record drawings of anything placed or constructed underground within the Licensed Premises.

8. Notices. Notices may be given by personal delivery or certified or first-class mail, postage pre-paid, at the addresses in the first paragraph of this Agreement, with notices to the City to be to the attention of the City Manager and only one notice being required to be given to Robertson.

9. Recording. After this Agreement takes effect as provided in the first paragraph on Page 1, it shall be recorded at the Oakland County Register of Deeds for the Premises so as to provide notice of its existence, terms, and conditions and not as any indication that any real property interest has been or will ever be granted by the City in or for the Licensed Premises.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. However, Robertson shall not assign this Agreement in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld. Any such assignment shall be reflected in a written instrument, satisfactory in form and content to the City, and signed by assignee and assignor and consented to by the City. In the event of any such City-approved assignment, the assignee shall be the Robertson under this Agreement.

11. No Third-Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity that is not a Party to this Agreement.

12. Severability. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be considered a separate, distinct and independent portion of this Agreement, and the remaining portions of this Agreement shall remain in full force and effect.

13. Amendments. This Agreement may be amended at any time, in writing, by mutual consent of the Parties. No amendment to this Agreement shall be effective and binding upon the Parties unless it expressly makes reference to this Agreement, is in writing, and is signed and acknowledged by duly authorized representatives of both Parties and approved by the City Council.

14. No Tenant. Robertson shall not by virtue of this Agreement be deemed to have become the tenant of the City or the Licensed Premises, nor to have been given or accorded, as against the City, possession of the Licensed Premises.

15. Nonwaiver. Unless otherwise expressly provided herein, no waiver by any Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement by the other Party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to the Parties hereunder or by law shall be cumulative and not alternative,

and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

16. Governmental Immunity. It is declared that the actions of the City under this Agreement are a governmental function. It is the intention of the Parties hereto that this Agreement shall not, in any manner, be construed to waive the defense of governmental immunity, which the City possessed prior to the execution of this Agreement.

17. Entire Agreement. This Agreement contains the entire agreement among the Parties pertaining to the subject matter hereof and all prior negotiations and agreements are merged herein. Neither the City nor the City's agents have made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by the Robertson by implication or otherwise unless expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF NOVI, a Michigan
Municipal Corporation**

By: Robert J. Gatt
Its: Mayor

By: Cortney Hanson
Its: Clerk

COUNTY OF OAKLAND)
) SS
STATE OF MICHIGAN)

On this _____ day of _____ 2019, Robert J. Gatt, Mayor, and Cortney Hanson, Clerk, of the City of Novi, executed the foregoing document before me and, being duly sworn for and on behalf of the City of Novi.

Notary Public
My Commission Expires: _____
Acting in Oakland County

Signatures Continue on Following Page

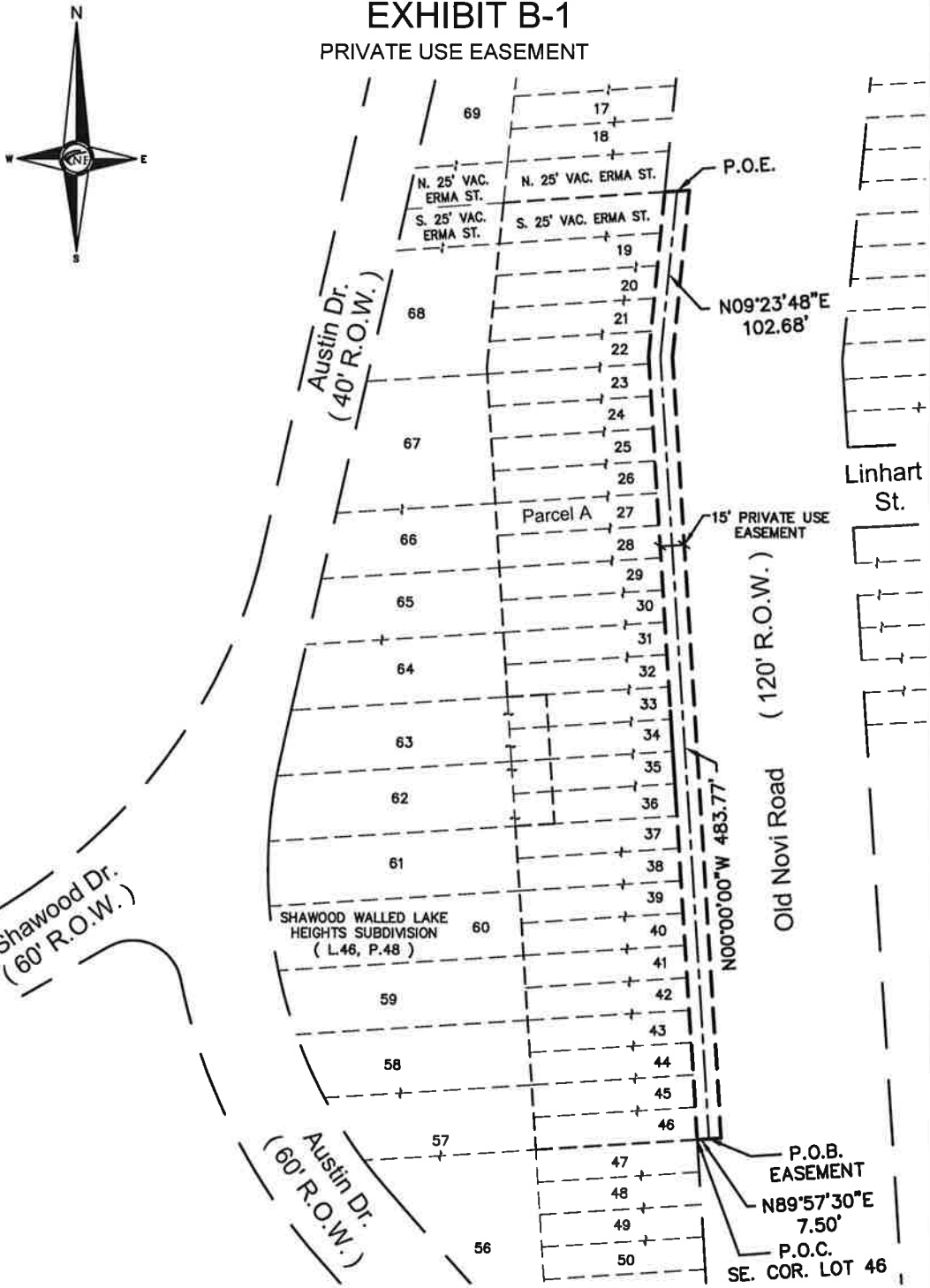
EXHIBIT A
SITE PLAN SHOWING IMPROVEMENTS
See Attached

SEE ATTACHED
EXHIBIT B

LEGAL DESCRIPTION OF LICENSE AREA

EXHIBIT B-1

PRIVATE USE EASEMENT

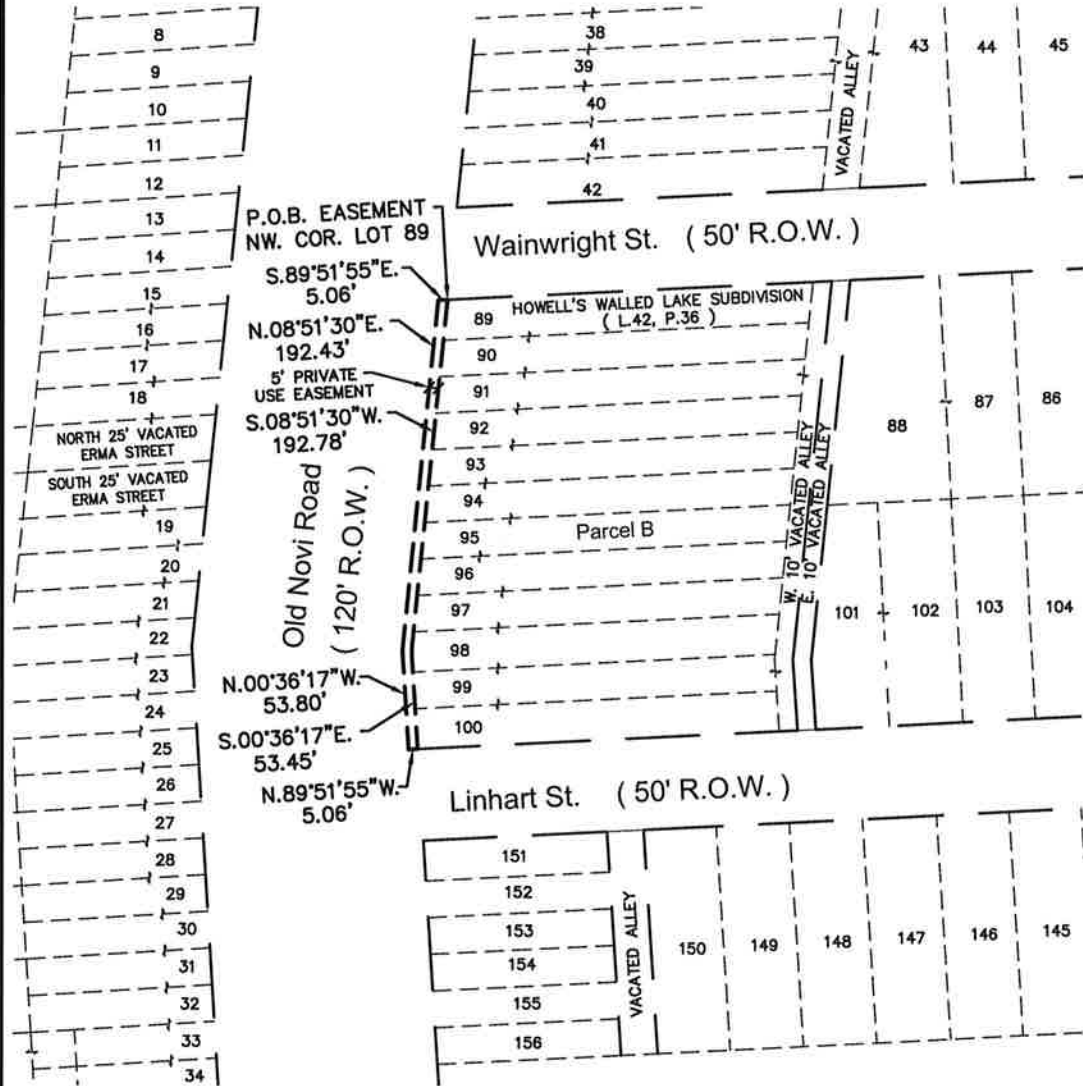


LEGAL DESCRIPTION - PRIVATE USE EASEMENT

A FIFTEEN (15) FOOT WIDE PRIVATE USE EASEMENT BEING PART OF OLD NOVI ROAD OF SHAWOOD WALLED LAKE HEIGHTS SUBDIVISION, PART OF THE NORTHEAST 1/4 OF SECTION 10, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 46 OF PLATS, PAGE 48, OAKLAND COUNTY RECORDS, BEING DESCRIBED ALONG ITS CENTERLINE AS: BEGINNING AT AT POINT DISTANT N.89°57'30"E. 7.50 FEET FROM THE SOUTHEAST CORNER OF LOT 46 OF SAID SHAWOOD WALLED LAKE HEIGHTS SUBDIVISION; THENCE N.00°00'00"W. 483.77 FEET; THENCE N.09°23'48"E. 102.68 FEET TO THE POINT OF ENDING.

EXHIBIT B-2

PRIVATE USE EASEMENT



LEGAL DESCRIPTION - PRIVATE USE EASEMENT

A FIVE (5) FOOT WIDE PRIVATE USE EASEMENT BEING PART OF OLD NOVI ROAD OF HOWELL'S WALLED LAKE SUBDIVISION, PART OF THE NORTHWEST 1/4 OF SECTION 11, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 42 OF PLATS, PAGE 36, OAKLAND COUNTY RECORDS, BEING DESCRIBED AS: BEGINNING AT THE NORTHWEST CORNER OF LOT 89 OF SAID HOWELL'S WALLED LAKE SUBDIVISION; THENCE S.08°51'30"W. 192.78 FEET; THENCE S.00°36'17"E. 53.45 FEET TO THE SOUTHWEST CORNER OF LOT 100 OF SAID HOWELL'S WALLED LAKE SUBDIVISION; THENCE N.89°51'55"W. 5.06 FEET; THENCE N.00°36'17"W. 53.80 FEET; THENCE N.08°51'30"E. 192.43 FEET; THENCE S.89°51'55"E. 5.06 FEET TO THE POINT OF BEGINNING.

NOWAK & FRAUS ENGINEERS
 46777 WOODWARD AVE.
 PONTIAC, MI 48342-5032
 TEL. (248) 332-7931
 WWW.NOWAKFRAUS.COM

DATE	SCALE	DRAWN	JOB NO.	SHEET
8-27-2019	1" = 80'	M.C.	J955	1 of 1