

**ROAD RIGHT-OF-WAY CONVEYANCE, REALIGNMENT AND  
CONSTRUCTION AGREEMENT**

This Agreement ("**Agreement**") dated \_\_\_\_\_, 2016, is made between the **City of Rochester Hills**, a Michigan municipal corporation (the "**City**") whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 and **G&V Investments, LLC**, a Michigan limited liability company ("**Owner**") whose address is 111 Willits, Suite 404, Birmingham, Michigan 48009.

**RECITALS:**

A. Owner owns two (2) parcels of land consisting of approximately 19.982 acres of undeveloped land located in the City of Rochester Hills along Rochester Road, more particularly described on the attached **Exhibit A** ("**Property**"), incorporated herein by reference.

B. Eddington Boulevard is a platted, public street under the City's jurisdiction that divides the Property.

C. There is presently no traffic control signal on Rochester Road, which is a state trunkline highway under the jurisdiction of the Michigan Department of Transportation ("**MDOT**"), between the Avon and Hamlin Road intersections.

D. The City is concerned about heavy and potentially unsafe traffic conditions on this segment of Rochester Road, as indicated by the movement conflicts of cars turning left from Eddington Boulevard and Drexelgate Parkway, traffic studies, and citizen reported concerns for safety.

E. The City believes traffic safety on this segment of Rochester Road will be improved with the installation of a traffic control signal in this corridor segment in connection with the realignment of Eddington Boulevard with Drexelgate Parkway.

F. MDOT has agreed to permit the installation of a traffic control signal at, and only at, the intersection of Eddington Boulevard, Drexelgate Parkway and Rochester Road if Eddington Boulevard is realigned to the south to intersect Rochester Road directly across from Drexelgate Parkway.

G. The installation of such traffic control signal has been a priority of the City, as evidenced by its inclusion in the City's Capital Improvement Plan since 2000.

H. Owner desires to cooperate with the City to realign Eddington Boulevard on the Property to facilitate the installation of a traffic control signal at the proposed new intersection of Rochester Road, Drexelgate Parkway and the Realigned Eddington Boulevard for the purpose of improving vehicular safety, ingress and egress to and from Rochester Road and Eddington Boulevard.

I. Owner has agreed to donate and convey to the City land for public right-of-way, to make a financial contribution for the City to realign a portion of Eddington Boulevard on the Property and to facilitate the installation of the traffic control signal and the orderly development of the Property.

J. The City desires to realign Eddington Boulevard and to install a traffic control signal at the intersection of Rochester Road, Drexelgate Parkway and the realigned Eddington Boulevard, for the purpose of improving traffic safety on Rochester Road between Avon and Hamlin Roads, which will enhance and benefit the public health, safety and welfare of the residents of Rochester Hills.

K. The Rochester Hills City Council, at a meeting duly held on November 14, 2016, adopted a resolution approving this Agreement and authorizing the City to execute, deliver and record this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions described in this Agreement, the parties agree as follows:

1. **Donation of Right of Way.** Owner shall donate to the City the right-of-way for the Realigned Eddington Boulevard (as defined below). Upon the execution of this Agreement, Owner shall execute and deliver to the City a warranty deed ("**Warranty Deed**") for the Realigned Eddington Boulevard, together with an owner's policy of title insurance from Seaver Title Agency insuring the City's marketable title in and to the Realigned Eddington Boulevard, all at Owner's expense.

2. **Realignment of Eddington Boulevard.** The City shall realign Eddington Boulevard by constructing a new public street together with the required work on Rochester Road, and with storm drains for the new street within the donated right-of-way, substantially in the location and configuration shown on the plan on the attached **Exhibit B** ("**Concept Plan**"), incorporated herein by reference (the "**Realigned Eddington Boulevard**"). The Realigned Eddington Boulevard shall be designed, engineered and

constructed by the City at its expense, and shall be completed, fully operational and accepted for dedication by the City as soon as reasonably possible during the 2017 construction season, subject to force majeure.

**3. Temporary Construction Easement.** Owner shall grant to the City any necessary temporary, non-exclusive construction easement over such portions of the Property (as mutually agreed upon by Owner and the City) as may be reasonably necessary to exercise the rights granted hereunder, including without limitation the installation and construction of the road surface, storm drain, traffic control devices and equipment, sidewalks and landscaping, in accordance with the final engineering design plans. This temporary construction easement shall terminate upon the completion of construction, not later than December 31, 2017.

**4. Installation of Traffic Signal.** The City agrees to install, at its expense, a full service traffic control signal at the intersection of Rochester Road, Realigned Eddington Boulevard and Drexelgate Parkway (“**Traffic Signal**”), which shall include, without limitation, the design, engineering and installation of the Traffic Signal and all road and utility improvements to the intersection of Rochester Road, Drexelgate Parkway and Realigned Eddington Boulevard (including tapers on Drexelgate, turn lanes, island reconfiguration, utility relocation, etc.) as required by MDOT and the City for the installation of the Traffic Signal (collectively, the “**Traffic Signal Improvements**”). All Traffic Signal Improvements shall be completed and fully operational before conclusion of the 2017 construction season, subject to force majeure. To the extent any additional easements on the Property are necessary for the placement of traffic control signs, devices or associated infrastructure or equipment, which cannot be located within the Realigned Eddington Boulevard right of way, Owner agrees to grant such easements to the minimum extent reasonably necessary.

**5. Closure of Existing Eddington Boulevard.** Upon the opening of the Realigned Eddington Boulevard for vehicular traffic to the general public, the City shall close the existing Eddington Boulevard to vehicular traffic from Rochester Road to the Realigned Eddington Boulevard (which shall be referred to as the “**Closed Eddington Boulevard**”), and take whatever governmental action is necessary or appropriate for the City to do so, provided that the City has no obligation to abandon or vacate the existing public right-of-way and will retain public ownership of entire Closed Eddington Boulevard. After the closure of Eddington Boulevard, the City shall remove the roadway surface and may remove or abandon in place any utilities within, and shall plant grass or otherwise landscape the Closed Eddington Boulevard between Rochester Road and approximately one hundred ten feet (110’) east of the existing easterly Rochester Road right of way where shown on the Concept Plan (“**Closed Eddington Boulevard Landscape Area**”) and shall remove the deceleration lane on Rochester Road and replace the curbing, and grade within such area. The City reserves the right to keep, use, and improve the Closed Eddington Boulevard Landscape Area as an open area accessible to the general public as a pedestrian park area. The City will be responsible for the maintainance of the Closed Eddington Boulevard, subject to Section 7d below. The City may retain the

existing Eddington Farms monument sign and may remove the street lights along the entire Closed Eddington Boulevard. The City shall retain the remainder of the pavement on the Closed Eddington Boulevard. Owner shall be permitted to have non-exclusive use of, and may reconfigure the remainder of the Closed Eddington Boulevard for access drives (including on-street parking in compliance with Section 138-8.302 of the City's Zoning Ordinance) and/or landscaping purposes, which may be included in any site plan submittals to the City for the Property adjacent to this area as provided in Section 7d below. In the event Owner (or its successors owning the property on both sides of the Closed Eddington Boulevard) does not utilize the Closed Eddington Boulevard for access purposes in its site plan submittal to the City, then the City may remove the pavement, plant grass or other landscaping and continue the Closed Eddington Boulevard Landscape Area to the east.

**6. Owner's Financial Contribution.** Owner shall contribute the sum of One Hundred Seventy-Five Thousand and 00/100 (\$175,000.00) Dollars ("**Contribution Payment**") to the City toward the Realigned Eddington Boulevard and the Traffic Signal Improvements. Owner shall pay the Contribution Payment to the City within thirty (30) days after the execution of this Agreement.

**7. Owner Commitments.** Owner covenants and agrees to the following restrictive covenants with respect to the Property:

a. Owner shall donate to the City the easterly thirty (30') feet of the existing open space where the eastern boundary of the Property meets the western boundary of Eddington Farms Subdivision, and Owner shall thereafter have no further rights or obligations with respect to such property. Owner shall continue to have the right to utilize such donated open space for the calculation of setback, buffering, open space and similar purposes in accordance with Article 8 of the City Zoning Ordinance.

b. The Property will be developed so that there will be no additional curb cuts permitted on Rochester Road.

c. The Property shall be developed so that there is continuous cross access in accordance with City Zoning Ordinance Section 138-8.302.C Main Streets for vehicular traffic between the northern driveway of the Property adjacent to Fifth Third Bank, and the adjacent property to the south owned by NP Rochester Hills LLC, a Missouri limited liability company, provided that the width of such cross access road right of way shall not exceed seventy feet (70') and shall be generally located where shown on **Exhibit B**. In the event Owner submits a site plan for any of the Property showing a reduced width for such right of way connections, the City will consider reducing the width of such right of way connections upon good cause shown by Owner.

d. To the extent any portion of the Closed Eddington Boulevard is used for access (with or without on-street parking) and/or landscaping purposes on any site plan for the adjacent Property that is approved by the City, the owner of that portion of the Property adjacent to the Closed Eddington Boulevard that obtains site plan approval for such area, and its successors and assigns, shall be responsible for the construction and the ongoing maintenance of such improvements. Otherwise, the City shall maintain the Closed Eddington Boulevard in accordance with Section 5 above.

e. Simultaneously with the execution of this Agreement, Owner shall record at the Register of Deeds a declaration against the Property that shall specify the foregoing covenants and restrictions in this Section 7, which shall run with the Property and be enforceable by the City.

**8. Notices.** All notices required herein shall be in writing, either hand-delivered with the receipt of delivery, or by certified mail, return receipt requested, or by overnight courier service as follows and shall be deemed given upon personal delivery, two business days after deposit for certified mail, or the next business day after deposit with an overnight courier:

To City: City Engineer  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

Copy to: John D. Staran  
Halefi, Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320

To Owner: William Gilbert  
G&V Investments, LLC  
111 Willits, Suite 404  
Birmingham, MI 48009

Copy to: John D. Gaber  
Williams, Williams, Rattner & Plunkett, P.C.  
380 N. Old Woodward Avenue, Suite 300  
Birmingham, MI 48009

**9. Entire Agreement.** This Agreement constitutes the entire agreement between the parties as to the subject matter hereof, and supersedes any and all prior and

contemporaneous representations, statements, promises, and undertakings of any kind, whether oral or written.

**10. Successors and Assigns.** This Agreement shall run with the land and be binding upon and inure to the benefit of Owner and the City and their respective successors and assigns. Owner shall have the right to sell, transfer, assign and/or mortgage all or any portion of the Property. Owner shall have the right to divide the Property, subdivide it or subject it to a condominium, in whole or in part. All such conveyances and divisions shall be in accordance with state law and City Ordinances and shall further be developed in accordance with Section 7 a. through d., above. Any transferee of all or any portion of the Property shall automatically be deemed, by acceptance of a deed or any ownership interest in and to such property to have assumed all obligations set forth herein, and to have agreed to comply with the provisions hereof. The transferor of the Property shall, upon the completion of the transfer, be relieved of all liability hereunder except that which arose during the transferor's period of ownership and which remains unsatisfied on the date of the transfer. Notwithstanding the foregoing, Owner's obligation under Section 6, above, to make the Contribution Payment shall survive Owner's transfer of ownership of any portion of the Property. The City acknowledges and represents that this Agreement may be relied upon for the future land use and development of the Property by Owner and its successors and assigns and transferees. Notwithstanding anything in this Agreement to the contrary, Owner shall have no obligation to develop the Property.

**11. Amendment.** This Agreement shall be amended only by a written amendment executed by the parties and recorded with the Oakland County Register of Deeds.

**12. Waiver.** No waiver of any of the terms and conditions of this Agreement shall be binding or effectual for any purpose unless expressed in writing and signed by both parties and any such waiver shall be effective only in the specific instance and for the purpose given.

**13. Severability.** The invalidity or any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses, or provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law.

**14. Construction.** Any rule of construction to the effect that ambiguities are resolved against the drafting party shall not apply to the interpretation and construction of this Agreement.

**15. Governing Law.** This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Oakland, State of Michigan.

**16. Third-Party Beneficiaries.** No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person not a party to the Agreement, and no such person shall have any right or cause of action hereunder.

**17. Recording.** This Agreement shall be recorded with the Oakland County Register of Deeds at the expense of Owner.

**18. Authority.** The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represent that the execution of this Agreement has been duly authorized and is binding on such party.

[signatures on following pages]

The parties execute this Agreement on the date set forth above.

G&V INVESTMENTS, LLC, a Michigan  
limited liability company

By: \_\_\_\_\_  
William G. Gilbert, Member

STATE OF MICHIGAN     )  
  ) ss:  
COUNTY OF OAKLAND    )

The foregoing was acknowledged before me on \_\_\_\_\_, 2016, by  
William G. Gilbert, Member of G&V Investments, LLC, a Michigan limited liability  
company, on behalf of the company.

\_\_\_\_\_  
Notary Public,  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_



CITY OF ROCHESTER HILLS,  
a Michigan municipal corporation

By: \_\_\_\_\_  
Bryan K. Barnett, Mayor

By: \_\_\_\_\_  
Tina Barton, Clerk

STATE OF MICHIGAN     )  
  ) ss:  
COUNTY OF OAKLAND    )

The foregoing was acknowledged before me on \_\_\_\_\_, 2016, by Bryan K. Barnett and Tina Barton, Mayor and City Clerk, respectively, of the City of Rochester Hills, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public,  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

Prepared by and When Recorded Return to:

John D. Gaber  
Williams, Williams, Rattner & Plunkett, P.C.  
380 N. Old Woodward Avenue, Suite 300  
Birmingham, Michigan 48009  
248-642-0333

**EXHIBIT A**  
**Property Legal Description**

**PARCEL A (NORTH OF EDDINGTON BOULEVARD)**

Port of the West ½ of Section 23, T.3N., R.11E., City of Rochester Hills, Oakland County, Michigan, being more particularly described as follows:

Beginning at a point which is N01°50'00"W 2.36 ft. along the West line of Section 23 and N85°52'55"E 66.05 ft. from the West ¼ corner of Section 23, T.3N., R.11E.; thence N85°52'55"E 409.33 ft.; thence S01°48'43"E 437.73 ft.; thence Westerly 8.72 ft. along the arc of a curve to the right (Radius of 535.00 ft., central angle of 00°56'01", long chord bears N83°57'43"W 8.72 ft.); thence Westerly 87.82 ft. along the arc of a curve to the left (Radius of 605.00 ft., central angle of 08°19'02"0, long chord bears N87°39'12" W 87.74 ft.); thence Westerly 51.57 ft. along the arc of curve to the right (Radius of 645.00 ft., central angle of 04°34'52", long chord bears N89°31'17"W 51.56 ft.); thence N87°13'52"W 262.17 ft.; thence N01°48'43"W 390.70 ft. along a line parallel with and 66 ft. East to the West line of Section 23 to the point of beginning.

Containing 169,509 Square Feet --- 3.891 Acres

**PARCEL B (SOUTH OF EDDINGTON BOULEVARD)**

Part of the SW ¼ of Section 23, T.3N., R.11E. City of Rochester Hills, Oakland County, Being more particularly described as follows:

Beginning at a point which is N01°50'00"W 2.36 feet along the West line of Section 23 and N85°52'55"E 66.05 feet and S01°48'43"E 498.70 feet from the West ¼ corner of said Section 23; thence the following four (4) courses along the South Right-of-Way of Eddington Boulevard; N88°11'17"E 124.90, and easterly 103.53 feet along the arc of a curve to the left (Radius 650.00 feet, central angle of 09°07'34", long chord bears N83°37'30"E 103.42 feet) and easterly 162.88 feet along the arc of a curve to the right (Radius 535.00 feet, central angle of 17°26'35", long chord bears N87°47'01"E 162.25 feet) and easterly 18.92 feet along the arc of a curve to the left (Radius 605.00 feet, central angle of 01°47'31" long chord bears S84°23'28"E 18.92 feet); thence S01°48'43"E 715.81 feet, thence S59°07'28"E 99.29 feet, thence N88°11'17"E 46.44 feet, thence S01°48'43"E 16.68 feet, thence S81°07'54"E 227.22 feet, thence S85°74'12"E 83.08 feet, thence N87°59'50"E 155.57 feet, thence N80°48'07"E 85.23 feet, thence S13°28'04"E 53.77 feet, thence N85°49'14"E 310.85 feet, thence N58°24'40"E 67.57 feet, thence N82°36'50"E 150.54 feet, thence S04°06'47" 235.44 feet, thence S05°57'15"W 93.62, thence S87°59'50"W 996.68 feet, thence N01°48'43"W 250.00 feet, thence S87°59'0"W 615.00 feet, thence N01°48'43"W 894.11 feet, to the point of beginning.

Containing 700,910 sq. ft.---16.091 Acres.

Subject to the rights of the public and of any governmental unit in any port thereof taken, used or deeded for street, road, or highway purposes.

**EXHIBIT B**

**Concept Plan of Realigned Eddington Boulevard**

