

(GILBERT)

PURCHASE AND SALE AGREEMENT

This Agreement ("Agreement") is entered into as of the ___ day of _____, 2005, by, and between City of Rochester of Hills, a Michigan municipal corporation, having an address at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 ("Seller"), and W. G. Gilbert, Inc., a Michigan corporation, on behalf of an entity to be formed, ("Purchaser"), having an address at 4635 Gallagher Road, Rochester, Michigan 48306.

RECITALS:

A. Seller is the owner of certain vacant real property located in the City of Rochester Hills, Oakland County, Michigan, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

B. Seller is desirous of selling and Purchaser is desirous of purchasing the Property upon the terms and conditions set forth herein.

C. The parties wish to set forth the consideration, terms and conditions upon which Seller shall sell and Purchaser shall purchase the Property.

NOW, THEREFORE, in consideration of the sums of money reflected herein, the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. Property. Purchaser shall purchase from Seller and Seller shall sell to Purchaser the Property, together with: (a) All rights of Seller in and to all air, mineral and riparian rights, and all tenements, hereditaments, privileges and appurtenances belonging or in any way appertaining thereto; (b) Any land lying in the bed of any street, road or avenue adjoining the Property to the center line thereof, but only to the extent of Seller's interest, if any, therein; (c) All easements recorded benefiting the Property, but only to the extent of Seller's interest, if any, therein; and (d) All feasible divisions of the Property permitted pursuant to the Land Division Act.

2. Sale and Conveyance. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell, warrant and convey to Purchaser, and Purchaser agrees to buy from Seller, the Property, subject only to the Permitted Exceptions (as hereafter defined).

3. Purchase Price. The purchase price for the Property shall be the sum of One Million Nine Hundred Eighty Thousand and 00/100 Dollars (\$1,980,000.00) which amount is based on the assumption that at least 120 dwelling units can be constructed

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on the Property. The Purchase Price is subject to adjustment either (a) upwards by the addition of Sixteen Thousand Five Hundred and 00/100 Dollars (\$16,500.00) per dwelling unit for each dwelling unit approved by the City for construction on the Property above 120 dwelling units or (b) downward by Sixteen Thousand Five Hundred and 00/100 Dollars (\$16,500.00) per dwelling unit for each dwelling unit approved by the City for construction on the Property below 120 dwelling units, but in any event the Purchase Price shall not be below One Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$1,850,000.00). The Purchase Price shall be paid pursuant to bank check or wire transfer.

4. Deposit. Simultaneously with the execution of this Agreement by Seller, Purchaser shall deliver to Philip R. Seaver Title Company ("Escrow Agent") the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) representing the earnest money deposit hereunder (the "Deposit"), the receipt of which the Escrow Agent shall acknowledge by its execution of this Agreement. The Deposit shall be held by the Escrow Agent in an interest bearing account (and the term "Deposit" shall include any and all interest accrued thereon), and shall be paid to Seller at the Closing or earlier as provided below in this Agreement, or otherwise refunded to Purchaser or disposed of as provided for in this Agreement. At closing, Purchaser shall receive a credit against the Purchase Price for the full amount of the Deposit as it may be supplemented as provided below. Seller and Purchaser acknowledge that the Escrow Agent is acting in that capacity as an accommodation to the parties, and agree to hold the Escrow Agent harmless from any liability or claim with respect to the Deposit, other than claims for gross negligence or willful misconduct. Seller and Purchaser agree that in the event of any dispute with respect to the Deposit, Escrow Agent may tender the Deposit to the Clerk of the Circuit Court for Oakland County, Michigan, and Escrow Agent shall thereafter be relieved of all obligation with respect thereto.

5. Inspection Period and Approval Period.

(a) Inspection Period. Purchaser, its agents and employees, shall have a period of ninety (90) days from the "Effective Date" of this Agreement, as defined in paragraph 16 below, to conduct such inspections, investigations, appraisals and tests of the Property, as Purchaser shall desire in order to satisfy itself as to the physical and economic condition thereof (the "Inspection Period"). Seller shall extend all reasonable cooperation to Purchaser, its agents and employees, to facilitate such inspections, investigations, appraisals and tests and hereby grants to Purchaser, Purchaser's attorneys, engineers, employees, contractors and subcontractors, a temporary easement during the term of the Inspection Period to gain entry to the Property to survey and inspect the Property and to perform such soil and other engineering tests and studies thereon as Purchaser reasonably deems necessary or desirable. The Purchaser shall indemnify, defend and hold the Seller, its agents, employees or assigns harmless from and against any and all liability, loss, damage, expense or claim, of any kind or

description whatsoever, sustained or suffered by the Seller, by virtue of the acts or omissions of the Purchaser, its agents, employees or assigns or independent contractors relating to the Property, as a result of or in connection with the Purchaser's presence upon the Property. In addition, Purchaser shall be authorized to contact any federal, state and local authorities and agencies for the purpose of discussing the current status of the Property and the feasibility of its development, especially with respect to the zoning, sewer availability and road approvals. Purchaser agrees to provide Seller with notice and reasonable opportunity to decide if it wants to participate in any meetings with governmental entities. If Purchaser shall, in its sole discretion, decide that the physical condition of the Property is unsatisfactory, or its intended development plans for the Property are not feasible, Purchaser may at its option terminate this Agreement and receive a prompt refund of the Deposit; provided, however, that Purchaser shall provide Seller with written notice of any such election prior to the expiration of the Inspection Period. If Purchaser shall fail to provide such written notice to Seller prior to the expiration of the Inspection Period, Purchaser shall be deemed to be satisfied with the condition of the Property, and shall be obligated to proceed with the transaction in accordance with the other terms and conditions of this Agreement. Within five (5) business days of the date hereof as to items (a) through (d), within five (5) business days of the date of Purchaser's written request as to item (e), Seller shall provide Purchaser with a copy of each of the following, if it exists and is in the possession of Seller: (a) all plans and specifications relating to the Property; (b) all soil boring tests relating to the Property; (c) all reports, studies, tests and plans relating to the present condition of the Property including, without limitation, any environmental problems relating thereto, or the redevelopment of the Property; (d) any and all communications within the past four years, to the extent in Seller's possession, to or from any governmental or quasi-governmental bodies or utility companies relating to the physical condition of the Property, including without limitation any environmental problems relating thereto, the roads or utilities servicing the Property or the development of the Property; and (e) such other items as Purchaser may reasonably request. If Purchaser elects, in its sole discretion, not to proceed with purchase of the Property any time prior to termination of the Inspection Period, Purchaser may terminate this Agreement upon which event this Agreement shall be of no further force or effect and the Deposit shall be returned to Purchaser in full. In the event that Purchaser elects to terminate this Agreement, Purchaser agrees to return to Seller all documents and records provided to Purchaser by Seller in connection with Purchaser's inspection of the Property, including all copies or duplicates of same.

(b) Approval Period. The parties agree that upon expiration of the Inspection Period, Purchaser will be submitting an application to the City of Rochester Hills, at Purchaser's cost, for rezoning, site plan and other approvals of the Property for Purchaser's intended use of the Property as a residential

development. Purchaser shall have one hundred eighty (180) days from the Effective Date of this Agreement to obtain the requisite governmental approval ("Approval Period"). Purchaser shall also, upon expiration of the Inspection Period and electing to proceed with purchase of the Property in accordance with the terms of this Agreement as provided in paragraph 5(a) above, instruct the Escrow Agent to deliver to Seller Twenty Five Thousand and 00/100 Dollars (\$25,000.00) of the Deposit which monies shall be non-refundable to Purchaser except in the event of a Seller default but which monies shall be a credit towards the Purchase Price. Seller acknowledges and agrees that Purchaser will be applying for zoning and site plan approval to use the Property for Purchaser's intended use as a residential development. If Purchaser obtains requisite governmental approvals for Purchaser's intended use of the Property as a residential development during the Approval Period, Purchaser shall proceed with purchase of the Property within thirty (30) days of expiration of the Approval Period. If Purchaser is unable to obtain all requisite governmental approvals, it shall have the option of terminating this Agreement in which event the remaining Twenty Five Thousand and 00/100 Dollars (\$25,000.00) of the initial Deposit of Fifty Thousand and 00/100 Dollars (\$50,000) held by Escrow Agent shall be returned in full to Purchaser.

Subject to Purchaser failing to obtain all requisite governmental approvals it needs to develop the Property as a residential development during the Approval Period, Purchaser shall have the right to extend the Approval Period for a maximum of two (2) additional three (3) month periods. Each option to extend the Approval Period shall be exercised by Purchaser delivering to the Seller, prior to the expiration of the Approval Period, written notice of Purchaser's intention to extend the Approval Period. In consideration for the first extension, the remaining Twenty Five Thousand and 00/100 Dollars (\$25,000) of the Deposit shall be released by Escrow Agent to Seller, and in consideration for the second extension, Ten Thousand and 00/100 Dollars (\$10,000.00) shall be delivered by Purchaser to Seller and all of these monies shall be non-refundable to Purchaser except in the event of a Seller default but which monies shall be a credit to the Purchase Price. If Purchaser obtains its governmental approvals as contemplated by this paragraph 5 within the extended Approval Period, Purchaser agrees to close this transaction within thirty (30) days of the end of the extended Approval Period.

6 Title and Survey.

(a) Title. As evidence of title, Seller agrees to furnish Purchaser, as soon as reasonably possible, but in no event later than twenty (20) days after the date of this Agreement, a title insurance commitment from an underwriter selected by and through Philip R. Seaver Title Company, ("Title Insurer") and to issue to Purchaser, at Closing, an ALTA Owners Title Policy-Form B, without standard

exceptions, and with only such exceptions for such matters as are set forth in this paragraph as "Permitted Exceptions", and including the standard zoning endorsement 3.0, in the amount of the Purchase Price, naming Purchaser as the insured (the "Title Commitment"). The Title Commitment shall be accompanied by copies of any instruments of record or other instruments concerning title reflected in the commitment. Such copies shall be provided at Seller's expense. If the Title Commitment shall contain any encumbrances or exceptions which, in the opinion of Purchaser and/or Purchaser's counsel, may interfere with Purchaser's intended use of the Property as a residential development, Purchaser shall notify Seller of such exceptions in writing within twenty-five (25) days of the date on which Purchaser has received both the Title Commitment and the Survey (as defined below), and Seller shall have ten (10) days from the date of such notification to cure or eliminate such encumbrances or exceptions. With respect to any such encumbrances or exceptions which Seller, using its best faith efforts, shall fail to eliminate within the aforesaid period, Purchaser may, at Purchaser's option, (i) waive its objections to and accept title subject to such encumbrances or exceptions; or (ii) rescind this Agreement, whereupon the entire Deposit shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect. Encumbrances or exceptions to title shown on the Title Commitment to which Purchaser does not object, or which with Purchaser's consent are waived and accepted or insured over are referred to as the "Permitted Exceptions". The Title Commitment shall also commit the Title Insurer, at Seller's expense, to delete the preprinted or so-called "standard" exceptions and Seller shall deliver to Title Insurer such instruments, documents, indemnities and releases as the Title Insurer shall reasonably require to obtain the deletions of those preprinted exceptions. The Title Commitment shall be endorsed by the Title Insurer as of the date of the Closing. Concurrently with the Closing, Seller shall pay for and cause to be delivered to Purchaser a policy of title insurance to be issued pursuant to the Title Commitment, in the full amount of the Purchase Price, insuring Purchaser's fee simple interest in the Property, subject only to the Permitted Exceptions.

(b) Survey. Within twenty (20) days of the Effective Date, Purchaser shall cause to be prepared by a licensed engineer, a survey meeting the requirements of Purchaser certified to Purchaser and the Title Insurer by a form of certificate acceptable to the Title Insurer (the "Survey"). To the extent that the legal description of the Property contained on Exhibit A differs from the legal description of the Property contained on the Survey, the legal description of the Property established by the Survey shall at Purchaser's election be substituted therefor. If the Survey shall contain any information that may, in Purchaser's sole discretion, interfere with Purchaser's Intended Use of the Property as a residential development, Purchaser shall notify Seller of such objections in writing within twenty (20) days of the later (i) the date on which Purchaser has received the Title Commitment and copies of all recorded documents affecting

the Property which constitute encumbrances against the Property or exceptions to the Seller's title, and (ii) the date on which Purchaser receives the Survey, and Seller shall have twenty (20) days from the date of such notification to eliminate such objections. If Seller shall fail to eliminate the objections within the aforesaid period, Purchaser may, at Purchaser's option:

- (i) Waive its objections to and accept the Survey subject to such objections; or
- (ii) Rescind this Agreement, whereupon the Deposit shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect.

The Purchaser shall be responsible for payment of the cost of the Survey.

7. Warranties and Representations. Seller represents, warrants and covenants to Purchaser as of the date hereof, and shall again represent, warrant and covenant to Purchaser at Closing, as follows:

- (i) Seller is currently the fee simple owner of the Property.
- (ii) To the best of Seller's knowledge, no actions, suits, claims or proceedings have been instituted or threatened against or affecting the Property at law or in equity or before any federal, state or municipal governmental department or agency or instrumentality thereof.
- (iii) Seller is duly and validly authorized to execute this Agreement and Seller has full power to enter into and perform this Agreement. Neither the execution and delivery of this Agreement nor its performance are restricted by or violate any contractual or other obligation of Seller.
- (iv) Seller has disclosed to Purchaser all assessments for public improvements that have been made against the Property and remain unpaid and/or are due in the future. Seller has received no notice of taking or condemnation, actual or proposed, with respect to the Property, and Seller has no reason to believe that any such taking, condemnation has been proposed or is under consideration.
- (v) The Property is insured against claims for liability due to injury to person or property. An insurance policy providing such coverage is presently in full force and paid; and Seller shall maintain the policy in full force and effect through the date of Closing. Between the date hereof and the Closing Date, Seller shall maintain (and deliver) the Property in substantially the same condition as it is as of the date of this Agreement.

(vi) To the best of Seller's actual knowledge, without duty to make inquiry, Seller represents and warrants that no toxic or hazardous substances or wastes, including without limitation any substance defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq., as amended), or any federal, state or local environmental law, ordinance, rule or regulation (collectively "Hazardous Materials") have been used, stored, released, spilled, discharged or otherwise disposed of on, in, under or otherwise affecting the Property by the Seller or its agents during the period in which Seller was the owner of the Property. Other than as set forth in the previous sentence, Purchaser is buying the Property "as-is" and "with all faults".

The representations and warranties contained in or to be made pursuant to this Agreement shall be deemed to be continuing and shall survive the Closing. Seller shall indemnify, defend and hold Purchaser harmless from and with respect to any costs, claims, losses, liabilities or expenses (including without limitation, reasonable attorneys' fees) arising out of the breach of the covenants, representations and warranties contained in this paragraph.

8. Closing.

(a) The "Closing" hereunder shall take place in accordance with paragraph 5 above at the offices of the Title Insurer provided that all conditions precedent to the Closing have been fulfilled or have been waived in writing by Purchaser. Notwithstanding anything contained herein to the contrary, Purchaser shall have the right at any time prior to closing to declare this Agreement terminated and of no further force or effect whereupon the Deposit shall be immediately returned to Purchaser if Purchaser discovers evidence of any materials, wastes or substances defined or classified as hazardous or toxic under federal, state or local laws or regulations, on, under, or about the Property; provided, however, that Purchaser has taken reasonable steps to investigate the environmental condition of the Property and that the discovery of evidence of hazardous or toxic materials, wastes or substances occurs after Purchaser's investigation and before Closing.

(b) The purchase and sale of the Property shall be consummated by the following:

(i) Execution by Seller of a Warranty Deed subject only to the permitted exceptions.

(ii) Delivery of a Closing Statement duly executed by Seller and Purchaser providing for the prorations and adjustments of the items as set forth in paragraph 10 and elsewhere in this Agreement.

(iii) Payment by Purchaser to Seller of the Purchase Price in accordance with paragraph 3 hereof.

(iv) Delivery by Seller of possession of the Property to Purchaser.

(v) Execution and delivery of such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required to carry out the terms and intent of this Agreement.

9. Conditions Precedent to Performance of Agreement by Purchaser. Purchaser shall be obligated to complete this transaction only upon satisfaction of each of the following conditions precedent or the waiver thereof by Purchaser:

(a) The Seller is able to convey marketable and insurable title to the Property in the condition required under this Agreement.

(b) The representations and warranties made by Seller in this Agreement are true on and as of the date of Closing with the same effect as though such representations and warranties had been made on and as of the date of Closing.

(c) Purchaser is satisfied with the availability of and location of all utilities and storm water drainage as required for Purchaser's intended use of the Property as a residential development.

(d) Purchaser shall have obtained from the City of Rochester Hills rezoning and site plan approval for Purchaser's intended use of the Property as a residential development.

(e) Seller shall have complied with all of the terms and conditions of this Agreement.

Anything contained in this Agreement to the contrary notwithstanding, Purchaser shall have no obligation to consummate the transaction contemplated hereby unless and until the conditions set forth in subparagraphs 9(a), (b), (c), (d) and (e) have been either satisfied or waived. If the conditions are neither satisfied nor waived by the date of Closing, Purchaser shall have the right to terminate this Agreement upon written notice to Seller; or if the conditions in paragraphs 9(a), (b), (c), (d) and (e) can be satisfied by the payment of money, Purchaser shall, subject to the approval of Seller, have the right, to the extent there is a liquidated amount, to pay any such amounts and deduct any amounts so paid from the Purchase Price.

10. Prorations and Adjustments. The following shall be prorated and adjusted between Seller and Purchaser on the basis as specified:

(a) Any unpaid real estate taxes, assessments, general as well as special, and water and sewer use charges (but not any specific hook-up charges) which have become a lien, against the Property as of the date of this Agreement shall be paid in full by Seller. Current taxes shall be prorated and adjusted as of the date of Closing in accordance with the due date basis of the municipality or taxing unit in which the Property is located. The tax proration provisions contained in this Agreement shall be interpreted and applied as if the amendments of law as set forth in Public Acts 80 and 279 of 1994 did not exist.

(b) The cost of the transfer taxes (both County and State), if any, shall be paid by Seller and shall be paid at the time of transfer of each Deed.

(c) All other items customarily prorated or required by any other provision of this Agreement to be prorated or adjusted shall be prorated as of the date of Closing.

11. Default.

(a) If Purchaser defaults hereunder, then provided Seller is not in default hereunder, Seller's sole and exclusive remedy shall be to terminate this Agreement by giving written notice thereof to Purchaser, whereupon the Deposit shall be retained by Seller as liquidated damages, as Seller's sole and exclusive remedy on account of such default hereunder by Purchaser, and neither party shall have any further liability or obligation to the other. The parties acknowledge and agree that actual damages in such event are uncertain in amount and difficult to ascertain and that said amount of liquidated damages was reasonably determined.

(b) If Seller defaults hereunder, then provided Purchaser is not in default hereunder, Purchaser may elect in its discretion either to: (i) Terminate this Agreement whereupon the Deposit shall be promptly returned to Purchaser, and Purchaser may seek judgment against Seller for damages, or (ii) Seek judgment against Seller for specific performance of this Agreement.

12. Brokers. Seller and Purchaser each represent and covenant to the other that they have not utilized and will not utilize the services of any broker or finder in connection with this transaction. Purchaser shall defend, indemnify and hold Seller harmless from all liability for brokerage commissions, finders fees or the like arising in connection with the sale of the Property other than any such amounts as may be claimed by any party alleging to have been retained by Seller; Seller shall defend,

indemnify and hold Purchaser harmless from all liability for brokerage commissions, finders fees or the like arising in connection with the sale of the Property other than any such amounts costs as may be claimed by any party alleging to have been retained by Purchaser.

13. Offer Termination. Purchaser's offer to buy the Property shall remain valid until 5:00 P.M., January 31, 2005, and if not accepted by Seller, the Deposit shall be returned to Purchaser.

14. General Provisions.

(a) This written Agreement, including documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants not contained herein. This Agreement may be amended only by a written memorandum subsequently executed by both of the parties hereto.

(b) No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default. In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

(c) Headings of sections are for convenience of reference only, and shall not be construed as a part of this Agreement.

(d) This Agreement shall be binding upon and shall inure to the benefits of the parties hereto, and their respective heirs, executors, personal representatives, successors, and assigns.

(e) Any and all notices permitted or required to be given hereunder shall be in writing and shall be either personally delivered to the party or shall be sent by U.S. registered or certified mail or by a reputable express mail company which guarantees next day delivery, at the following addresses:

If to Purchaser:
Mr. William G. Gilbert
W. G. Gilbert, Inc.
4635 Gallagher Road
Rochester, Michigan 48306

With a copy to:
Ms. C. Kim Shierk
Myers Nelson Dillon & Shierk, PLLC
40701 Woodward Avenue, Suite 235
Bloomfield Hills, Michigan 48304

If to Seller:
City of Rochester Hills
1000 Rochester Hills Drive
Rochester HILLS, Michigan 48309
Atten: Mayor

With a copy to:
Mr. John D. Staran
Beier Howlett, PC
200 E. Long Lake Rd., Suite 110
Bloomfield Hills, Michigan 48304

Any such notice shall be deemed given and effective upon postage thereof by the primary party from whom it is being sent.

(f) This Agreement shall be construed in accordance with and governed in all respects by the laws of the State of Michigan. This Agreement constitutes an exclusive arrangement between Purchaser and Seller. From and after the date of this Agreement and until such time as this Agreement is terminated, neither Seller nor its agents, affiliates or employees shall sell, offer for sale, negotiate with respect to or otherwise deal in the sale of the Property or any other interest therein.

15. Assignment. Purchaser's rights hereunder may be assigned any time prior to Closing to any entity affiliated with Purchaser, provided that William G. Gilbert is at least 50% owner or the manager of the entity.

16. Agreement Date. The parties acknowledge and agree that, notwithstanding the date or dates upon which it is executed by the parties, the "Effective Date" of this Agreement is _____, 200__.

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

WITNESSES:

PURCHASER:

W. G. GILBERT, INC., a Michigan corporation,
on behalf of an entity to be formed

By: _____
William G. Gilbert
Its: President

WITNESSES:

SELLER:

CITY OF ROCHESTER HILLS, a Michigan
municipal corporation

By:

Its: Mayor

And By: _____

Its: Clerk

EXHIBIT A

Legal Description

Land situated in the City of Rochester Hills, County of Oakland and State of Michigan,
to wit:

Town 3 North, Range 11 East, Section 22, Part of the Northeast 1/4, beginning at a point distant North 87 degrees 19 minutes 12 seconds East 915.46 feet and South 02 degrees 34 minutes 56 seconds East 810 feet from the North 1/4 corner; thence North 87 degrees 19 minutes 12 seconds East 500 feet; thence South 02 degrees 34 minutes 56 seconds East 627.34 feet; thence South 87 degrees 00 minutes 55 seconds West 140 feet; thence South 02 degrees 34 minutes 56 seconds East 280 feet; thence South 87 degrees 00 minutes 55 seconds West 150.89 feet; thence along a curve to the left, radius 698.56 feet, chord bears South 78 degrees 17 minutes 45 seconds West 211.80 feet, distance of 212.62 feet; thence North 02 degrees 34 minutes 56 seconds West 942.10 feet to the beginning, 9.58 acres.

Parcel: 15-22-226-016