

CITY PLACE
PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement ("Agreement") dated May 5, 2004 2004, is made between G&V Investments, LLC ("G&V") whose address is 2565 Rochester Road, Rochester Hills, MI 48307, Fifth Third Bank, ("Bank") whose address is c/o Corporate Facilities, 38 Fountain Square Plaza, MD 10 ATA 1, Cincinnati, Ohio 45263, and the City of Rochester Hills ("Rochester Hills" or the "City") whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309. G&V and the Bank are sometimes collectively referred to as Owners.

This Agreement is based on the following recitals which the parties acknowledge are true.

RECITALS:

I. G&V seeks to develop approximately 28.296 acres of land located in the City of Rochester Hills, more particularly described in "City Place Proposed Plan Development" at Exhibit "A,"¹ ("Land"), as a planned unit development ("PUD") to be known as the City Place PUD. Bank is purchasing 1.259 acres of the Land from G&V and wishes to participate in the PUD. At the time the Bank land is severed, appropriate cross-access easements will be provided.

II. The Land is currently zoned R-4 One Family Residential.

¹ "City Place Proposed Plan Development," which is Exhibit "A," is referenced in the attachment hereto and is available at the City of Rochester Hills Clerk's Office.

III. A PUD is necessary to develop the Land because it provides greater design flexibility and benefit to the City and the Owners than standard zoning:

- A. A PUD is the only mechanism available under the Zoning Ordinance to implement the mixed use designation of the Land in accordance with Rochester Hills' Master Land Use Plan.
- B. A PUD will minimize adverse impacts from traffic by consolidating access to Rochester Road;
- C. A PUD will permit greater flexibility in mixing and organizing uses within the new development; and
- D. A PUD will allow for greater innovation in the design and layout of structures within the PUD.

IV. The Owners have submitted an application and development plan for a PUD that fully complies with the requirements set forth in the City of Rochester Hills Zoning Ordinance Section 138-1001 *et. seq.*

V. The Land will be developed as a PUD in compliance with the City of Rochester Hills Zoning Ordinance Section 138-1001 *et. seq.* and substantially in accordance with the site plan in Exhibit "A" ("the Plan").

VI. Acting pursuant to the City of Rochester Hills Zoning Ordinance Section 138-1004, a pre-application workshop with the Planning Commission occurred on July 30, 2002, a preliminary review of the PUD conceptual plan occurred on July 15, 2003, the final review of the PUD, site plan, and final approval of the PUD rezoning occurred on May 5, 2004.

VII. The Planning Commission and City Council, after proper notice, publication, hearings, and in full compliance with applicable state law and the City of Rochester Hills Zoning Ordinance, reclassified the Land under the Zoning Ordinance as a PUD.

VIII. The PUD will contain modifications of ordinance requirements, including changes to setback, area, and height requirements. These modifications are described in the PUD plan, Exhibit "A".

IX. The City has determined that the future development plans, uses, and conditions shown in the Plan, Exhibit "A," are reasonable and promote the public health, safety, and general welfare of the citizens of Rochester Hills, and are consistent with the surrounding uses and the intent of the City's Master Land Use Plan.

X. The City acknowledges and agrees that the Land has been given full and final PUD approval and that the Land has been rezoned to PUD, as more fully described in the City of Rochester Hills Zoning Ordinance Section, 138-1001 *et. seq.*, and that all relevant provisions of the zoning ordinance have been satisfied.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Permitted Uses.

Owners agree that the Land will be used only in accordance with the Plan and for residential, retail, office and restaurant uses as follows:

A. Residential use – no fewer than 250 dwelling units, no more than 305 dwelling units.

B. Office and bank use – no less than 4,000, no more than 35,000 square feet.

C. Retail use – no more than 15,000 square feet.

D. Restaurants.

In no event will more than a total of 35,000 square feet of office, bank, retail and restaurant use be constructed. The only drive through facilities allowed on the Land will be banks, credit unions and other financial institutions. The maximum projected square footage calculation is 710,177 square feet.

2. Architectural Standards and Building Materials.

G&V will construct within the building envelopes shown on the plan the various building types (No. 100-800 Series) shown in the PUD development book using those or similar elevations and materials. Particular buildings will be selected based on market demand. All elevations must be approved by the Planning Commission, City Council, and the Historic District Commission. Porches and stairs may project outside building envelope - minimum five feet set backs to drive or parking.

3. Modification to Zoning Standards.

The density, height, bulk area and buffer standards contained in the Zoning Ordinance are modified as set forth in the Plan, Exhibit "A."

4. Trees and Woodlands.

Trees and Woodlands regulated under the City's Tree Conservation Ordinance will be protected and replaced in accordance with ordinance requirements, and shall require a tree removal permit at time of final site plan approval.

5. Open Space and Landscaping.

Open Space and landscaped areas are as shown on the Plan. The landscape plan contemplates an extensive landscape buffer on the east boundary of the Land.

6. Wetlands.

Regulated wetlands will be protected and mitigated as required under applicable Michigan Department of Environmental Quality Regulations ("DEQ Regulations") and is subject to issuance of a city wetland use permit at the time of final site plan approval. This Agreement does not authorize or allow a decrease or reduction in the wetland mitigation requirements under the DEQ Regulations.

7. Historic House.

"Parcel-D" is the historic district. The relocation and renovation of the historic house is subject to review and approval of the City's Historic District Commission. The house relocation shall be consistent with the location as shown on the PUD plan.

8. Right of Way, Streets and Utilities.

The Plan recognizes a 75' right of way from the centerline of Rochester Road. The Owners shall dedicate to the City that property which would permit a 75' right of way as measured from the centerline of Rochester Road. All streets and utilities (water, wastewater, sewage and storm water collection and treatment facilities) shall be constructed in accordance with the engineering standards of the City except that utilities may, as approved by the City Engineer and landscape architect, be constructed under pavement and landscape areas as shown on the Plan. Security for construction and maintenance of all streets and utilities shall be provided in accordance with applicable City ordinances.

9. Signage.

The size, location, and types of signs to be used in the PUD as set forth in Exhibit "A" (LS-6, 100-A, 100-B, 100-C and 100-D) and the bank renderings are conceptual and shall require a city sign permit at the time of final site plan approval. All signs shall comply with the City's sign ordinance.

10. Notice.

All notices required herein shall be in writing, either hand-delivered with the receipt of delivery, or by certified mail, return receipt requested, as follows:

For the City: City of Rochester Hills
 Attention: Planning Director, E. Anzek
 1000 Rochester Hills Drive
 Rochester Hills, MI 48309

For G&V
Investments:

G&V Investments, LLC
Attn: William Gilbert
2565 Rochester Road
Rochester Hills, MI 48307

Copy to:

Joseph F. Galvin, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, MI 48226

For Bank
Copy to:

Fifth Third Bank
c/o Corporate Facilities
38 Fountain Square Plaza
MD 10 ATA 1
Cincinnati, OH 45263

11. Governmental Approvals.

The City agrees to provide G&V and Bank with site plan, condominium (or subdivision) and any other required administrative approvals together with all other permits and licenses necessary or convenient to develop the City Place PUD upon receipt of required applications, payment of applicable fees, and compliance with all ordinances, statutes, rules and regulations.

The City also agrees to cooperate with G&V and Bank in applying for and obtaining such permits, licenses or other approvals as are within the jurisdiction of other governmental agencies which are convenient or necessary to develop the City Place PUD. The Owners agree to comply with engineering and fire department requirements. The Owners shall submit final site plans to the Planning Commission and City Council for final review and approval.

The procedure for the City to review Project plans and construction drawings for demolition, clearing, grading, utilities, landscaping, and related approvals and permits shall be performed as follows:

- (1) The City shall review and approve construction drawings and plans submitted by Owners to the City for review and issue the required land improvement permits, right of way permits, building permits and other permits and approvals within a reasonable period of time from submission, provided that said plans and drawings comply with the Final PUD Plan, this Agreement, and the City's rules and design standards to the extent they are not inconsistent with the Final PUD Plan or this Agreement.
- (2) The City shall, after City review and approval, promptly and diligently transmit to appropriate agencies the plans for water,

sanitary sewer, and storm sewer drains for permit processing. Once Owners have obtained all pertinent approvals and permits and a pre-construction meeting is held with the City, then Owners may start construction of the public utilities.

- (3) It is the intent of the parties that review comments for resubmission shall be made by the City and its planning and engineering departments within a reasonable period of time after submission of all documents normally required. Any review by City Council and/or the Planning Commission shall occur within a reasonable time after review completed by the City departments.
- (4) So long as Owners are acting with due diligence, the City shall not deny Owners the right for temporary occupancy permits for the reasons that improvements are not completed, if such do not relate to health or safety concerns such as lack of water mains, sanitary sewers, or access.
- (5) Owners, their servants, agents, employees and contractors shall have the right to enter upon all dedicated easements, right of way, and lands conveyed to the City in order to construct, inspect, repair and replace improvements for which Owners are permitted or obligated. City shall indemnify, defend and save harmless Owners for any injury to persons or property due to its activities within any dedicated easement, right of way or temporary easement. This Subsection (5) shall be included within any dedication or conveyance to the City.

Whenever the consent, approval or permit issuance of City Council, the Planning Commission, the Historic District Commission or any other City commission, department, staff, attorney or representative is required, such consent, approval or permit issuance shall not be unreasonably delayed, conditioned or withheld.

12. Phases.

The construction shown in the Plan in Exhibit "A" may take place at different times, but shall constitute a single phase. Substantial construction shall be commenced on the Land within two years of the date of final PUD approval. The entirety of the PUD shall be completed within ten years of the date of final PUD approval except for extensions of time as approved by the City Attorney. Reasonable requests by G&V and/or then owner of a parcel of the Land for extensions of time for completion of the PUD shall be approved and allowed by the City Attorney. If the PUD is not completed within the allowable time frame then the City may seek an order of specific performance from the Oakland County Circuit Court.

13. Contract.

The terms of this Agreement are contractual and not a mere recital, and the Owners and Rochester Hills represent and warrant that they intend to be bound thereby.

14. Entire Agreement. Binding On Future Owners.

This Agreement constitutes the entire agreement between the Owners and the City as to the subject matter, and supersedes any and all prior representations, statements, promises, and undertakings of any kind, whether oral or written. This Agreement is binding upon and inures to the benefit of Owners and the City and their respective successors and assigns. All future owners and occupants shall be bound by the terms of this

Agreement, and Owners' authority, responsibilities and obligations hereunder shall run with the land.

15. Zoning Ordinance Requirements.

Except as set forth in this Agreement and the Final PUD Plan, the Project shall be developed in accordance with the City Code of Ordinances. In the event this Agreement or the Final PUD Plan is inconsistent with the City Code of Ordinances, regulations or design standards, then this Agreement and the Final PUD Plan shall control. The parties acknowledge and understand that modifications may be requested by Owner to vary the strict requirements of City ordinances and design standards. Subject to Section 16 below, the City Council shall make all decisions on such requests.

16. Minor Modifications.

Modifications to the Final PUD Plan may be required which may include, for example, modifications to building sizes, shapes and elevations. Minor changes to the Final PUD Plan may be approved by City staff without referral to the Planning Commission or City Council provided that said plans and drawings comply with the Final PUD Plan, this Agreement, and the City's rules and design standards to the extent they are not inconsistent with the Final PUD Plan or this Agreement. Minor changes may include: (a) reduction in the size of any building and/or sign; (b) not more than ten percent (10%) increase in the size of any building, as shown on any approved Site Plan, but in no event shall any building be larger than the

footprint shown on page C6 of this Agreement, except the projections for porches and stairs allowed in Section 2; (c) exterior building materials identified on the Plan may be replaced by similar types of exterior building materials of better like or quality; (d) landscaping materials of better or like quality; (e) changes in floor plans which do not alter the character of the use; and (f) internal rearrangement of a parking lot which does not affect the total number of parking spaces or alter access locations or design. Any modifications sought that exceed the authority granted to City staff in this Section shall be submitted by staff to City Council for approval.

17. 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 the Owners and the City and any such waiver shall be effective only in the specific instance and for the purpose given.

18. Severability.

In the event that any provision of this Agreement is found to be void, illegal, or invalid for any reason, the remaining provisions shall nevertheless remain in full force and effect.

19. 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.

20. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall together constitute a single Agreement.

21. Remedies.

In the event that a party believes the other party is not acting reasonably or in conformity with this Agreement, then the aggrieved party may petition the Oakland County Circuit Court to resolve such dispute and the parties shall make themselves immediately available for a hearing on a date to be set by the Court. In the event that the Court finds the party has not acted in good faith or in conformity with this Agreement, then the Court may order reasonable costs and attorney fees incurred to the prevailing party. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

G&V Investments, LLC

By: 

William G. Gilbert
G&V Investments, LLC
2565 South Rochester Road
Rochester Hills, MI 48307

Fifth Third Bank

By: 

Jeffrey Wagner, Vice President
Fifth Third Bank *BRADLEY M. NEWMAN*
1000 Town Center *ASSISTANT VICE PRESIDENT*
Suite 1600, JTWN3D
Southfield, MI 48075

City of Rochester Hills

By: 

Pat Somerville, Mayor
1000 Rochester Hills Drive
Rochester Hills, MI 48309

By: 

Bev Jasinski, Clerk
1000 Rochester Hills Drive
Rochester Hills, MI 48309

DELIB:2481595.9\122944-00001