

LIBER 37059 PG 719

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LIBER 37059 PAGE 719
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PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

CITY OF ROCHESTER HILLS

PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT ("Agreement") is made this 29th day of June, 2005, by and between the CITY OF ROCHESTER HILLS, a Michigan municipal corporation ("City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, and TIENKEN PARTNERS, LLC, a Michigan limited liability company ("Developer"), whose address is 37020 Garfield, Suite T-1, Clinton Township, Michigan 48036.

WITNESSETH:

WHEREAS, Developer desires to redevelop the property described on the attached Exhibit A, which constitutes approximately 12.4 acres and is located at the southeast corner of Rochester Road and Tienken Road in the City ("Property");

WHEREAS, Developer has submitted an application ("PUD Application") to redevelop the Property under the planned unit development district zoning of the City, pursuant to the provisions of Sections 138-1001 et. seq. of the Code of Ordinances of the City ("PUD Ordinance") for a commercial planned unit development ("PUD");

WHEREAS, the proposed PUD for the Property consists of the development of up to seven (7) buildings consisting of approximately 107,367 square feet of commercial and office development on the Property with unique architectural features ("Project");

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5/26/04

WHEREAS, Developer has agreed to dedicate and convey right of way adjacent to Rochester Road and Tienken Road for road improvements to improve traffic circulation on the adjacent roadways, and has agreed to make such improvements to the public roadways together with Curtis Properties Group, LLC ("Curtis"), owner of the proposed Papa Joe's Gourmet Food Market development at the northwest corner of Rochester Road and Tienken Road;

WHEREAS, Developer has agreed to comply with the proposed right of way setbacks on Tienken Road and Rochester Road as set forth in the proposed Tienken Road Corridor Study prepared by the City's consultant dated March, 2000, reducing the buildable land area of the Project and requiring modification to the buffer along the south property line of the Project as set forth in Section 14 below;

WHEREAS, the PUD is consistent with the intent of, and satisfies the conditions of the PUD Ordinance required to approve the PUD;

WHEREAS, the PUD has undergone preliminary review by the City Planning Commission and City Council, who have preliminarily approved the PUD;

WHEREAS, the City Planning Commission, after giving proper notice, held a public hearing on January 13, 2004, at which Developer's PUD Application, final PUD site plan attached hereto at Exhibit B ("Final PUD Plan") and this Agreement were considered, and comments and recommendations of the public were heard, and the Planning Commission recommended that the PUD overlay zoning for the Property be approved by City Council;

WHEREAS, the City Council, at a meeting duly held on March 3, 2004, adopted a resolution approving the PUD overlay zoning for the Property;

5/26/04

WHEREAS, the PUD Ordinance requires the execution and recording of this Agreement in connection with the final approval of the PUD, setting forth the conditions upon which such approval is based;

WHEREAS, the City desires to ensure that the Property is developed and used in accordance with approved Final PUD Plan and applicable laws and regulations.

NOW, THEREFORE, the Developer and the City, in consideration of the mutual covenants described herein, and with the express understanding that this Agreement contains important and essential terms as part of the final approval of the PUD, agree as follows:

1. Incorporation of Recitals. The parties acknowledge and represent that the foregoing recitals are true and accurate and are hereby incorporated into this Agreement to be binding upon the parties.

2. PUD Approval. The parties acknowledge and agree that the Project has been granted final PUD approval by the City Council for the development of not more than 107,367 square feet of commercial and office space, subject to the terms of this Agreement and in compliance with the Final PUD Plan. Such approval includes approval of the Final PUD Plan, this Agreement and all exhibits attached to the Final PUD Plan and this Agreement, which take precedence over and supersede any and all prior reports, agreements, plans and other submissions to the City relative to the Property. Developer's rights to develop the Property as provided for in this Agreement are fully vested upon the City's execution of this Agreement and approval of the site plan for the Project.

5/26/04

3. Zoning. The City acknowledges that the Property has been rezoned B-2 Neighborhood Business, with PUD overlay district subject to the terms of this Agreement. Approval of the Final PUD Plan and this Agreement shall constitute an inseparable part of the zoning amendment. No subsequent zoning action by the City shall impair the rights of the Developer hereunder, and the uses and development permitted by this Agreement shall be deemed to be lawful, conforming uses.

4. Permitted Uses. The following uses shall be permitted within the Project without conditions or any further approval or consent of the City:

- (1) Any generally recognized retail business which supplies commodities on the premises, for persons residing in adjacent residential areas, such as but not limited to groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, and notions; dry cleaners, service only, not plants; laundromats; and hardware.
- (2) Any personal service establishment which performs services on the premises, for persons residing in adjacent residential areas, such as but not limited to shoe repair, tailor shops, beauty parlors, barbershops, financial services, insurance services, real estate sales, and tax preparation services.
- (3) Professional offices of doctors, lawyers, dentists, chiropractors, osteopaths, and similar or allied professions.
- (4) Banks (with drive-through facilities if incidental to the principal function).
- (5) Instruction centers for music, art, dance crafts, karate, etc.
- (6) Nursery schools, day nurseries, and child care centers.
- (7) Any retail business whose principal activity is the sale of new merchandise in any enclosed building.
- (8) Any service establishment of an office-showroom or workshop nature of an electrician, decorator, dressmaker, tailor, shoemaker, baker, printer, upholsterer, or an establishment doing radio, television or home appliance repair, photographic reproduction, and

5/26/04

similar establishments that require a retail adjunct and no more objectionable character than such, subject to the provision that no more than five persons shall be employed at any time in the fabrication, repair and other processing of goods. The uses allowed in this subsection shall not include establishments such as muffler, shock absorber or brake replacement businesses, motor oil change, automotive, gas station or other automotive service establishment repair (which shall not prohibit automotive part sales).

- (9) Restaurants or other places serving food or beverage, provided that the maximum square footage of all restaurants in the Project shall not exceed twenty-five (25%) percent of the total square footage of all buildings in the Project. A drive through for a restaurant shall be permitted provided that site plan approval for such drive through is obtained from the Planning Commission.
- (10) Sale and service of food outdoors, provided such use is incidental to a similar principal use indoors and adjacent and adjoining to the principal use.
- (11) Offices of any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic and sales.
- (12) Health or exercise clubs.
- (13) Accessory uses customarily incidental to any of the uses identified in this Section 4.
- (14) One freestanding walk-up ATM.

5. Development Phasing. Developer intends that construction of the Project shall not be phased, but that the buildings as shown on the Final PUD Plan, will be constructed at different times as tenant leases or other occupant arrangements are finalized. Site improvements associated with any particular building, including without limitation parking fields, sidewalks and landscaping, will be made at the time such building is constructed. The following improvements shall be constructed prior to or contemporaneously with the construction of the first building in the Project: (a) the road

5/26/04

improvements and entrances to the Project as set forth in Section 7 below and the Final PUD Plan, (b) the storm drainage facilities as set forth in Section 8 below and the Final PUD Plan, (c) the sanitary sewer facilities as set forth in Section 9 below and the Final PUD Plan, and (d) the public water facilities as set forth in Section 10 below and the Final PUD Plan. Such underground utilities shall be installed at one time and shall not be phased, so that the City can approve a complete utility plan, and can accept the as built utilities at one time upon completion. Notwithstanding the foregoing to the contrary, within three (3) years from the date Developer obtains its first building permit for the Project, Developer shall have completed the construction of all buildings in the Project.

6. Dedication of Road Right of Way. Prior to the commencement of construction activities for the Project, Developer shall dedicate and convey the right of way as shown on the Final PUD Plan for Rochester Road to the Michigan Department of Transportation ("MDOT"), and Developer shall dedicate and convey the right of way as shown on the Final PUD Plan for Tienken Road to the Road Commission for Oakland County ("RCOC").

7. Construction of Road Improvements. As a material inducement to the City for approval of the Project, Developer, at its expense, shall construct the access drives to Rochester Road and Tienken Road as shown on the Final PUD Plan, and shall construct other road improvements to Rochester Road and Tienken Road together with Curtis, owner of the proposed Papa Joe's Gourmet Food Market development at the northwest corner of Rochester Road and Tienken Road, in accordance with a certain Road Improvement Agreement to be entered into by and among Developer, Curtis and

5/26/04

the City, which is incorporated herein by reference ("Road Improvement Agreement"). Such Road Improvement Agreement provides for the simultaneous design, construction and funding of the road improvements for both the Project and the Papa Joe's PUD. The parties agree and acknowledge that the Road Improvement Agreement and all obligations of Developer thereunder will not be effective unless and until the PUD (including this PUD Agreement and the Final PUD Plan) and the site plan for this Project and the Papa Joe's PUD are approved by the City.

In the event that the improvements pursuant to the Road Improvement Agreement are not completed in accordance therewith within three (3) years from approval of the PUD and the site plan for the Project, and Developer has not funded the escrows or executed the project design and construction contracts in accordance with the Road Improvement Agreement, then the City may provide Developer with a written notice that the City intends to revoke its approval of the PUD for the Project, and if Developer shall not have provided City reasonably satisfactory evidence that such improvements will be completed within thirty (30) days of the City's notice, then the City shall have the right to revoke its approval of the PUD for the Project upon written notice to Developer. In any case, no Certificate of Occupancy shall be issued until all road improvements are substantially completed so as to allow traffic to flow on all lanes of Tienken Road and Rochester Road as improved pursuant to the Road Improvement Agreement.

Within thirty (30) days after approval of the PUD and the site plan for the Project, Developer shall post a bond or a letter of credit in the amount agreed upon by Developer and City Staff to pay for the alignment of the entrance drive on the property

5/26/04

north of Tienken Road directly across from the Project ("North Drive") with the westerly driveway of the Project ("South Drive"). If the City determines in the good faith exercise of its reasonable judgment within five (5) years from the posting of the bond or letter of credit that crash data or other information suggests that a hazardous traffic condition exists by reason of such drives not being in alignment, then Developer, at its cost, will conduct a traffic study with respect to such condition. If the City determines in the good faith exercise of its reasonable judgment after review of the traffic study that a hazardous traffic condition exists by reason of such drives not being in alignment, and that alignment of such drives would materially reduce the hazardous traffic condition, then Developer shall, at its cost, align the North Drive with the South Drive, and if Developer fails to do so within six (6) months after such request, weather permitting, then the City may draw on the bond or letter of credit and align the North Drive with the South Drive, and Developer shall be relieved of such obligation. If the City does not request a traffic study within the five (5) year period, then Developer's obligation hereunder shall terminate and the bond or letter of credit shall be released. Notwithstanding the foregoing to the contrary, if the owner of the property on which the North Drive is located redevelops his property or performs any work on his property pursuant to a building permit, then Developer shall not be obligated to align the North Drive with the South Drive and the bond or letter of credit shall be released. The parties acknowledge that Developer has received a consent letter from the owner of the property where the North Drive is located to realign the North Drive, a copy of which is attached hereto at Exhibit C and incorporated herein by reference.

5/26/04

8. Storm Drainage. The existing on-site storm drainage is carried approximately 700 feet off-site through an existing 27" storm drain to an existing open ditch, which drains to an existing wetland area that serves as an outlet for the current development on the Property and for adjacent developments. The parties acknowledge that the Project will not increase the amount of the impervious areas currently existing on the Property. Nonetheless, Developer agrees to provide for stormwater detention on the Property pursuant to City Ordinances and the design standards of the City Engineer, which will be released into the existing 27" storm drain to drain off-site.

9. Sanitary Sewer. The Project will be connected to existing sanitary sewer lines to be made available by the City to service the Property. The individual buildings comprising the Project shall be entitled to connect to the sanitary sewer system upon payment of the customary tap-in charges and any other customary and applicable fees and charges, with credit given for such fees and charges paid in the past.

10. Public Water. The Project will be connected to the existing public water mains to be made available by the City to service the Property. The individual buildings comprising the Project shall be entitled to connect to the City public water lines upon payment of the customary tap-in fees and any other customary and applicable fees or charges, with credit given for such fees and charges paid in the past.

11. Architectural Character of Project. All phases of the Project shall be architecturally harmonious, consistent and compatible with the architectural renderings ("Renderings") and landscaping plans attached hereto as part of the Final PUD Plan, and the exterior building materials identified on Exhibit D attached hereto ("Materials"), which are all hereby approved by the City for the improvements to be constructed on

5/26/04

the Property as part of the Project. Notwithstanding the foregoing to the contrary, the parties acknowledge that the Renderings and Materials are conceptual and intended to maintain and indicate a consistent general character of the development. Specific details and materials may vary slightly, dependent upon final tenants selected. Accordingly, the Renderings and Materials may be modified by Developer, with City Staff approval, to comply with the requirements of tenants or occupants of the Project, provided that such architectural renderings and building materials are architecturally harmonious, consistent and compatible with the Renderings and the Materials attached hereto. For purposes of expediency, any such modifications to the architectural renderings shall be reviewed and approved by City Staff. All trees and woodlands will be preserved as shown on the Final PUD Plan.

12. Signage. The parties acknowledge that the size, location and dimensions of the building and monument signs permitted to be erected on the Property cannot be determined until the tenants or occupants of the buildings in the Project and their signage requirements are identified. All building and monument signs shall be architecturally harmonious and compatible with the Renderings, the general character of the Project, and the signage concepts attached hereto at Exhibit E and incorporated herein by reference. All building and monument signs shall be in conformance with the City's existing sign ordinance, and any variances or modifications thereto shall be approved by the City's Sign Board of Appeals. No monument signs shall have any moving message boards. Notwithstanding the foregoing to the contrary, the parties agree that the Project identification signs located on the archways on the Renderings

5/26/04

shall be considered as architectural design features of the Project to be approved by City Staff, and shall not constitute signs subject to the City's sign ordinance.

13. Zoning Ordinance Requirements. The current height, bulk, density and area requirements of the B-2 General Business District shall apply to the Project. For purposes of the requirement of Ordinance 138-1111(s) that there be 25 feet of separation between commercial buildings on a property, the parties agree that Buildings B and C, and Buildings E and F as shown on the Final PUD Plan shall constitute single buildings unless such buildings are built by Developer as separate buildings substantially consistent with the Final PUD Plan. The current off-street parking requirements of Article IX of the City Code of Ordinances shall apply to the Project. 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 are inconsistent with the City Code of Ordinances, regulations or design standards in existence on the date of this Agreement, then this Agreement and the Final PUD Plan shall control. Except for any such conflict, the provisions of the Zoning Ordinance as amended through Ordinance No. ___ shall apply. The parties acknowledge and understand that modifications may be requested by Developer to vary the strict requirements of City ordinances and design standards.

14. Modifications to Zoning Ordinance Requirements. Notwithstanding the provisions of Section 13 above to the contrary, the following modifications to the requirements of the Zoning Ordinance are approved by the City without further review:

- (1) Buildings A and C, as depicted on the Final PUD Plan, are authorized to share a loading zone. Buildings B and C, as depicted

on the Final PUD Plan, are authorized to share a loading zone. Buildings E and F, as depicted on the Final PUD Plan, are also authorized to share a loading zone.

- (2) For the reason that Developer has conveyed to MDOT and/or RCOC the right of way required pursuant to the proposed Tienken Road Corridor Study, the requirement of Section 138-1216 of the Zoning Ordinance that the Type B buffer along the south property line of the Project must be twenty-five (25') feet in width is hereby modified to require that such buffer be only twenty (20') feet in width.
- (3) For the reason that Developer has conveyed to MDOT and/or RCOC the right of way required pursuant to the proposed Tienken Road Corridor Study, the requirement of Section 138-1266 of the Zoning Ordinance that off-street parking shall not be permitted in the twenty-five (25') foot side yard setback along the south property line of the Project is hereby modified to provide that parking spaces in such setback shall be no closer than twenty (20') feet from the south property line of the Project.
- (4) The parking requirements as set forth on the Final PUD Plan (5 spaces per 1,000 square feet of building area for the first 50,000 square feet of building area, and 4.5 spaces per 1,000 square feet of building area in excess of the 50,000 square feet of building area) shall also apply to all uses permitted under Section 4 above.

5/26/04

- (5) The requirement of a six foot opaque screen in Section 138-1216 of the Zoning Ordinance along the south and east boundaries of the Project shall be satisfied by the existing landscaping and the new landscaping to be installed pursuant to the Final PUD Plan.

15. Minor Modifications. Modifications to the Final PUD Plan may be required based on factors such as tenant or occupant needs, or modifications to applicable fire, building or other codes, which may include, for example, modifications to building sizes, shapes and elevations. For purposes of expediency, minor changes to the Final PUD Plan shall be reviewed and approved by City Staff, provided that such changes do not affect the architectural character of the Project. Minor changes may include, without limitation: (a) reduction in the size of any building; (b) an increase in the size of any building, provided that the size of other building(s) is decreased so that all buildings within the Project do not exceed a total of 107,367 square feet; (c) landscaping materials identified in the Final PUD Plan may be replaced by similar types of landscaping materials of better or like quality; (d) changes in floor plans which do not alter the character of the use; and (e) internal rearrangement of parking lots that do not reduce the total number of parking spaces in the Project below that required in Section 14(4) above. Any modifications sought that exceed the authority granted to City Staff in this Section, in the judgment of City Staff, shall be submitted to the Planning Commission for recommendation and to City Council for approval.

16. City Plan Review. Final site plan approval for the Project, and any modifications or amendments to the site plan, may be granted by City Staff if all conditions of PUD approval are complied with and there are no major differences

between the site plan and the Final PUD Plan. 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 Developer to the City for review and issue the required land improvement permits, building permits and other permits and approvals in a reasonably expedient manner, 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, without delay after City review and approval, promptly and diligently transmit to appropriate agencies the plans for water, and sanitary sewer for permit processing. Once Developer has obtained all pertinent approvals and permits and a pre-construction meeting is held with the City, then Developer 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 in a reasonably expedient mannerafter submission of all documents normally required. Any review by the City Council and/or Planning Commission shall occur as soon as reasonably possibleafter review is completed by the City departments.
- (4) So long as Developer is acting with due diligence, Developer makes an initial submission of "as built" plans for site improvements completed at the time of submission, and the Developer's escrow account with the City for the payment of review and inspection fees is current, the City shall not deny Developer 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) Developer, its 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 Developer is permitted or is obligated.. This Subsection (5) shall be included within any dedication or conveyance to the City.

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

18. Sale of Property. Developer shall have the right to sell, transfer, assign and/or mortgage all or any portion of the Property. Developer 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 local ordinances. In the event all or any portion of the Property changes ownership or control, the terms and conditions of this Agreement shall be binding on any successor owner of all or any portion of the Property. In connection therewith, Developer agrees to provide appropriate reciprocal easements for access, ingress and egress to and from any portion of the Property and the public roads adjacent to the Property. In the event the Property, or any part thereof, is transferred so that the Property, in its entirety, is owned by more than one person or entity, any breach of this Agreement or violation of any applicable provision of the City Code of Ordinances occurring on any part of the Property will be the sole responsibility and liability of the person or entity who or which owns that part of the Property on which the breach or violation occurs and will have no effect whatsoever on the other portions of the Property or the owners of such other portions. The City acknowledges and represents that this Agreement may be relied upon for the future land use and development of the Property by Developer and its successors and assigns and transferees. Notwithstanding anything in this Agreement to the contrary, Developer shall have no obligation to develop the Property.

19. Zoning Board of Appeals. The Zoning Board of Appeals shall have no jurisdiction over the Property or the application of this Agreement.

20. Environmental Considerations. The Property is defined as a "Facility" pursuant to MCL 324.201001(9). A Baseline Environmental Assessment ("BEA") was filed with the Michigan Department of Environmental Quality on February 14, 2003. A copy of the BEA is available upon written request to Developer or the Michigan Department of Environmental Quality Southeast Michigan office. If additional environmental contamination is found on the Property necessitating remediation, then Developer and City shall work together in good faith to obtain some form of tax increment financing through the City's Brownfield Redevelopment Authority or other governmental agency to pay for the expense of such remediation. However, the foregoing is not intended to commit or obligate the City to provide financing or issue bonds for brownfield activities.

21. Integration/Amendments. This Agreement and its exhibits sets forth the entire agreement between the parties relative to the subject matter hereof. No prior or contemporaneous oral or written representations, statements, promises, agreements or undertakings made by either party or agent of either party that are not contained in this Agreement shall be valid or binding. This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement. Amendments shall be processed as provided by the City Code of Ordinances. Remedial amendments to correct errors and omissions may be approved and executed by the Mayor so long as they are consistent with the spirit and intent of this Agreement.

5/26/04

22. Severability. It is understood and agreed by the parties that if any part, term or provision of this Agreement is finally held by the courts to be illegal or in conflict with any statute, ordinance, rule, regulation or other applicable law, the validity of the remaining portions or provisions of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

23. 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.

24. Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

25. Remedies. In the event that a party believes that 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 that 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.

26. Inconsistency. To the extent that the Agreements and exhibits conflict with City Ordinance requirements, the terms of this Agreement and exhibits will control. Any clerical errors or mistakes in this Agreement or its exhibits may be corrected by any

of the parties, and all parties agree to cooperate in making such corrections in order to effectuate the intent of the parties in entering into this Agreement. In all events any reference to City Ordinances shall mean existing Ordinances of the City at time of execution of this Agreement.

27. 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 represents that the execution of this Agreement has been duly authorized and is binding on such party.

28. PUD Expiration. In the event Developer or its successor:

- (1) Notifies the City of abandonment of the development plan for the Project;
- (2) Is adjudged by a Court of competent jurisdiction to be in material default, breach, violation of this Agreement or the Final PUD Plan and fails to correct or cure same given a reasonably opportunity to do so; or
- (3) Otherwise fails to develop the Property or commence physical construction of any improvements for a period of two (2) year from the last approval of construction plans submitted or land improvement permit granted, or revision or amendment of the Final PUD Plan, or if the Construction Escrow Funds are not escrowed as provided in the Road Improvement Agreement, and upon at least two (2) months prior written notice from the City, fails to undertake to correct such condition or seek or request an extension from the City that shall not be unreasonably withheld or delayed, then the City may, after providing written notice and opportunity to be heard, revoke the PUD zoning designation and rescind this Agreement. Notwithstanding the foregoing, if before any expiration of the Final PUD Plan or any amendment and after sixty (60) days prior written notice from the City, Developer requests in writing an extension, the City shall automatically grant a one (1) year extension to commence development and/or physical construction of improvements, and/or deposit the Construction Escrow Funds pursuant to the Road Improvement Agreement. Further, if

Developer is delayed due to the attainment of permits from other regulatory or governmental agencies for which application has been made and pursued, then the expiration date of such two (2) year period to undertake development or construction of physical improvements shall be tolled and the two (2) year period extended for a period of time commensurate with the delay to permit the commencement of construction and/or development. The commencement of construction of any physical improvements shall vest in Developer the right to develop the Property pursuant to this Agreement without time limitations imposed by the City in accordance with the PUD Final Plan as may be amended and/or revised and this Agreement.

- (4) Notwithstanding the foregoing, Developer, for itself and its successors and assigns, retains the right at any time prior to the commencement of construction of the improvements contemplated by the Final PUD Plan to terminate this Agreement.
- (5) In the event that this Agreement and the Final PUD Plan have been terminated as provided in this Section 28, the City reserves the right, at its discretion, to amend the underlying zoning of the Property.

29. Limitation of City's Liability. This Project is a private undertaking, and the parties understand and agree that: (a) this Project is private development; (b) the City has no interest or responsibilities for or duty to third parties concerning any improvements on the Property except and only until such time that the City accepts any public improvements pursuant to this Agreement and the Final PUD Plan; (c) Developer shall have full and exclusive control of the Property subject to the limitations and obligations of Developer under this Agreement; and (d) the contractual relationship between the City and Developer is such that Developer is an independent contractor and not an agent, partner or joint venturer of or with the City.

30. Binding Effect. This Agreement shall not be effective until the effective date of the City's Ordinance rezoning the Property to PUD, or until the Agreement is recorded in the office of the Oakland County Register of Deeds and a certified copy of

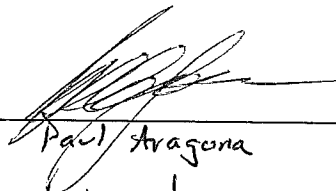
the recorded Agreement has been delivered to the City, whichever occurs later. This Agreement shall run with the land and bind the parties, their heirs, successors, and assigns. It is also understood that the members of the City Council and/or the City Administration and/or its departments may change, but the City shall nonetheless remain bound by this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

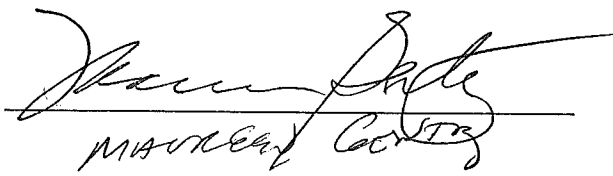
WITNESSES:

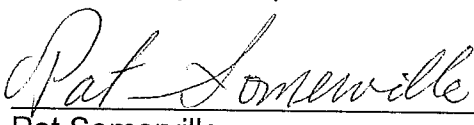
TIENKEN PARTNERS, LLC, a Michigan limited liability company

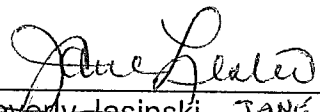
Leslie Osterland
Leslie Osterland
Valerie Pociask
VALERIE POCIASK

By: 
Paul Aragona
Its: Member

CITY OF ROCHESTER HILLS,
a Michigan Municipal corporation


Pat Somerville
Sandra T. DiSipio
SANDRA T. DiSipio

By: 
Pat Somerville
Its Mayor

By: 
Beverly Jasinski JANE LESLIE
Its City Clerk

5/26/04

STATE OF MICHIGAN)
)SS.
COUNTY OF Macomb)

The foregoing was acknowledged before me this 26th day of May, 2004, by Paul Aragona, Member of TIENKEN PARTNERS, LLC, a Michigan limited liability company.

Leslie Osterland Leslie Osterland
Notary Public
Macomb County, Michigan
My commission expires: 6-23-04
Acting in Macomb County

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

Lane Leslie
The foregoing was acknowledged before me this 29th day of June, 2004, by Pat Somerville and ~~Beverly Jasinski~~ respectively the Mayor and Clerk of the City of Rochester Hills, a Michigan municipal corporation on behalf of the corporation.

Nancy S. Peek Notary Public
County, Michigan
My commission expires:

Nancy S. Peek
Notary Public, Oakland County, MI
My Commission Expires November 19, 2007

acting in Oakland City

AFTER RECORDING, RETURN TO:

JOHN D. GABER, ESQ.
WILLIAMS, WILLIAMS, RUBY & PLUNKETT, P.C.
380 N. OLD WOODWARD AVENUE, SUITE 300
BIRMINGHAM, MICHIGAN 48009
(248) 642-0333

INDEX OF EXHIBITS

- Exhibit A - Legal Description of Property
- Exhibit B - Final PUD Plan
- Exhibit C - Consent Letter for North Drive
- Exhibit D - Building Materials
- Exhibit E - Signage Concepts

5/26/04

EXHIBIT A

Legal Description of Property**PARCEL A:**

A parcel of Land in the Northwest $\frac{1}{4}$ of Section 11, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as: Commencing at the Northwest Corner of said Section 11; thence East 150.00 feet along the North Line of said Section 11 and along the Centerline of Tienken Road (variable width) for a PLACE OF BEGINNING; thence continuing East 505.93 feet along said North Line and along said Centerline; thence South 327.25 feet; thence N89°40'00"W 596.49 feet; thence N00°05'51"E 174.11 feet; thence N31°05'32"E 174.78 feet to the North Line of said Section 11 and the said Centerline of Tienken Road and to the Place of Beginning, containing 4.30 acres of land, more or less, subject to easements, exceptions, conditions and requirements, if any.

*Pt. 15-11-101-032
+ Pt. Rd*

PARCEL B:

A parcel of Land in the Northwest $\frac{1}{4}$ of Section 11, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as: Commencing at the Northwest Corner of said Section 11; thence East 655.93 feet along the North Line of said Section 11 and along the Centerline of Tienken Road (variable width) for a PLACE OF BEGINNING; thence continuing East 203.57 feet along said North Line and along said Centerline to the Northwest Corner of "Junction Land Company's Subdivision" as recorded in Liber 22, Page 28, Oakland County Records; thence South 328.43 feet along the West Line of said Subdivision; thence N89°40'00"W 203.59 feet; thence North 327.25 feet to the North Line of said Section 11 and the said Centerline of Tienken Road and to the Place of Beginning, containing 1.53 acres of land, more or less, subject to easements, exceptions, conditions and requirements, if any.

*Pt. 15-11-101-032
+ Pt. Rd*

PARCEL C:

A parcel of Land in the Northwest $\frac{1}{4}$ of Section 11, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as: Commencing at the Northwest Corner of said Section 11; thence East 859.50 feet along the North Line of said Section 11 and along the Centerline of Tienken Road (variable width) to the Northwest Corner of "Junction Land Company's Subdivision" as recorded in Liber 22, Page 28, Oakland County Records; thence South 328.43 feet along the West Line of said Subdivision for a PLACE OF BEGINNING, thence continuing South 320.49 feet along the West Line of said Subdivision; thence S89°55'43"W 864.641 feet to the West Line of Section 11; thence N00°27'00"E 397.99 feet along said West Line; thence N31°05'32"E 119.53 feet; thence S00°05'51"W 174.11 feet; thence S89°40'00"E 800.06 feet to the North Line of said Section 11 and the said Centerline of Tienken Road and to the Place of Beginning, containing 6.59 acres of land, more or less, subject to easements, exceptions, conditions and requirements, if any.

*Pt. 15-11-101-032
+ Pt. Rd*

LIBER 37059 PG 742

5/26/04

EXHIBIT B

Final PUD Plan

5/26/04

EXHIBIT C

Consent Letter for North Drive

Tienken Partners, LLC
37020 Garfield, Suite T-1
Clinton Twp., MI 48036
Phone: (313) 286-0124 Fax: (313) 286-1115

December 19, 2003

Mr. Paul Henderson
24400 Jefferson Avenue
St. Clair Shores, MI 48090

Dear Mr. Henderson:

Your request to relocate the drive on Tienken Road as it relates to my property at 6375 Rochester Rd., Rochester Hills, MI, is approved. My approval is conditioned upon the following:

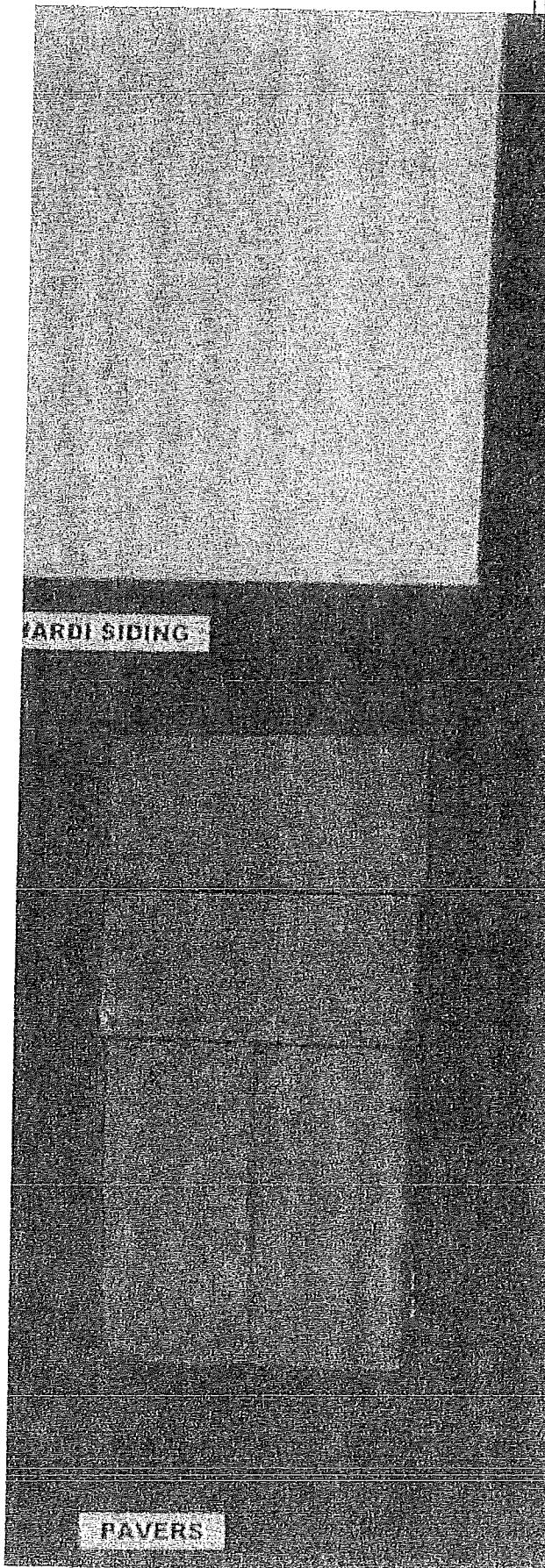
1. All costs are to be paid you.
2. The new drive must be in place prior to removal of the existing drive.
3. The new drive must be adequate to service my site to include deliveries to my loading dock.

Sincerely,

[Handwritten Signature]
 Ryan Meyer
 6375 Rochester Road
 Rochester Hills, MI

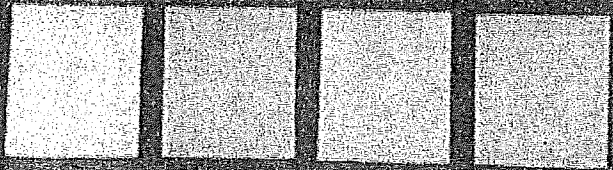
EXHIBIT D

Building Materials




WARDI SIDING

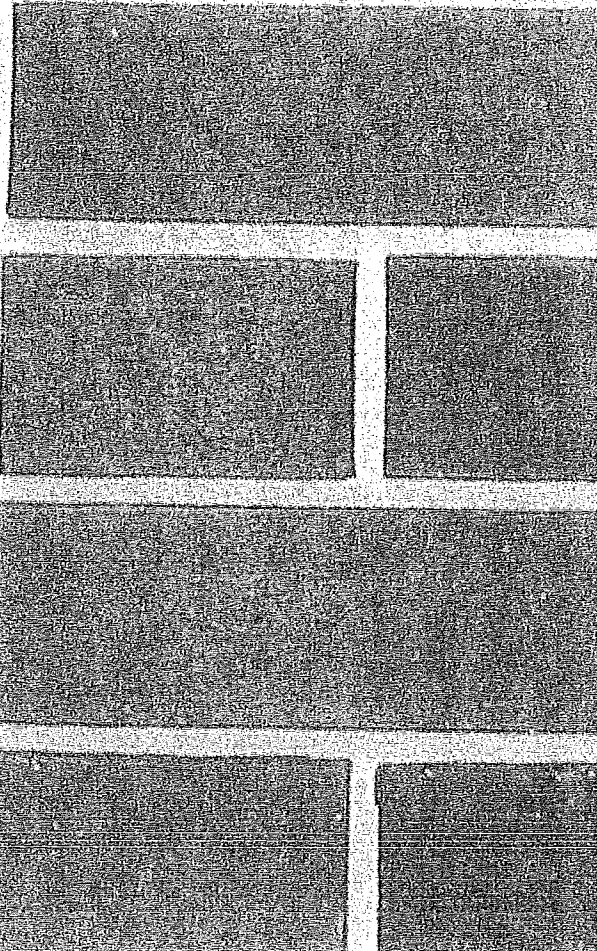
PAVERS



PAINT

 INTERSTATE BRICK

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 A collection of various brick and paver samples in different colors and shapes, arranged in a grid-like pattern.

CITY WALK

ROCHESTER HILLS, MI

HOLIDAY ENTERPRISES

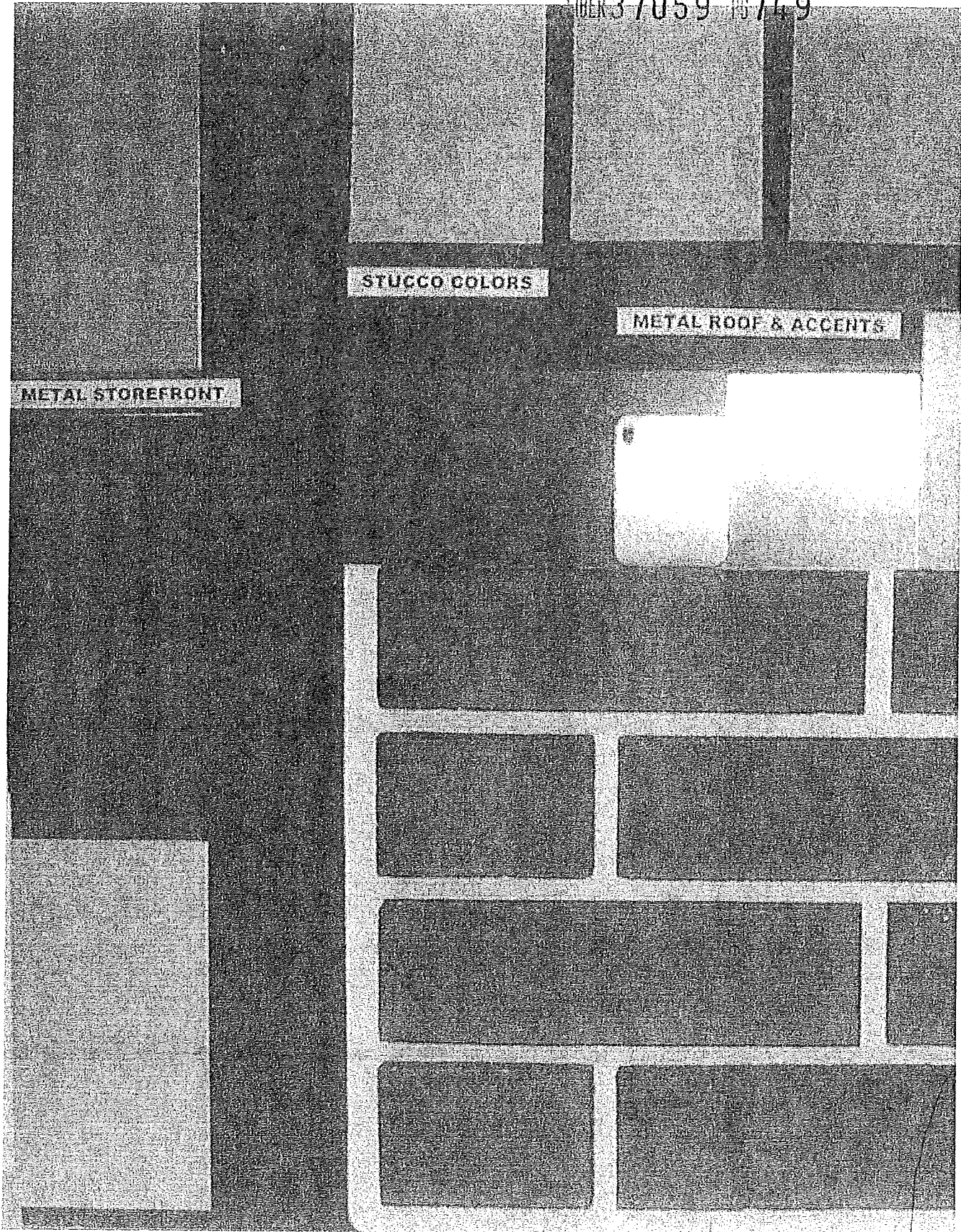
SAMPLE BOARD A

BRICK

Ironstone

STANDARD

COLORED CONCRETE



METAL STOREFRONT

STUCCO COLORS

METAL ROOF & ACCENTS

CITY WALK

HOLIDAY ENTERPRISES

SAMPLE BOARD B

ER O H E S T E R H I L L S M I L L S O W A K E

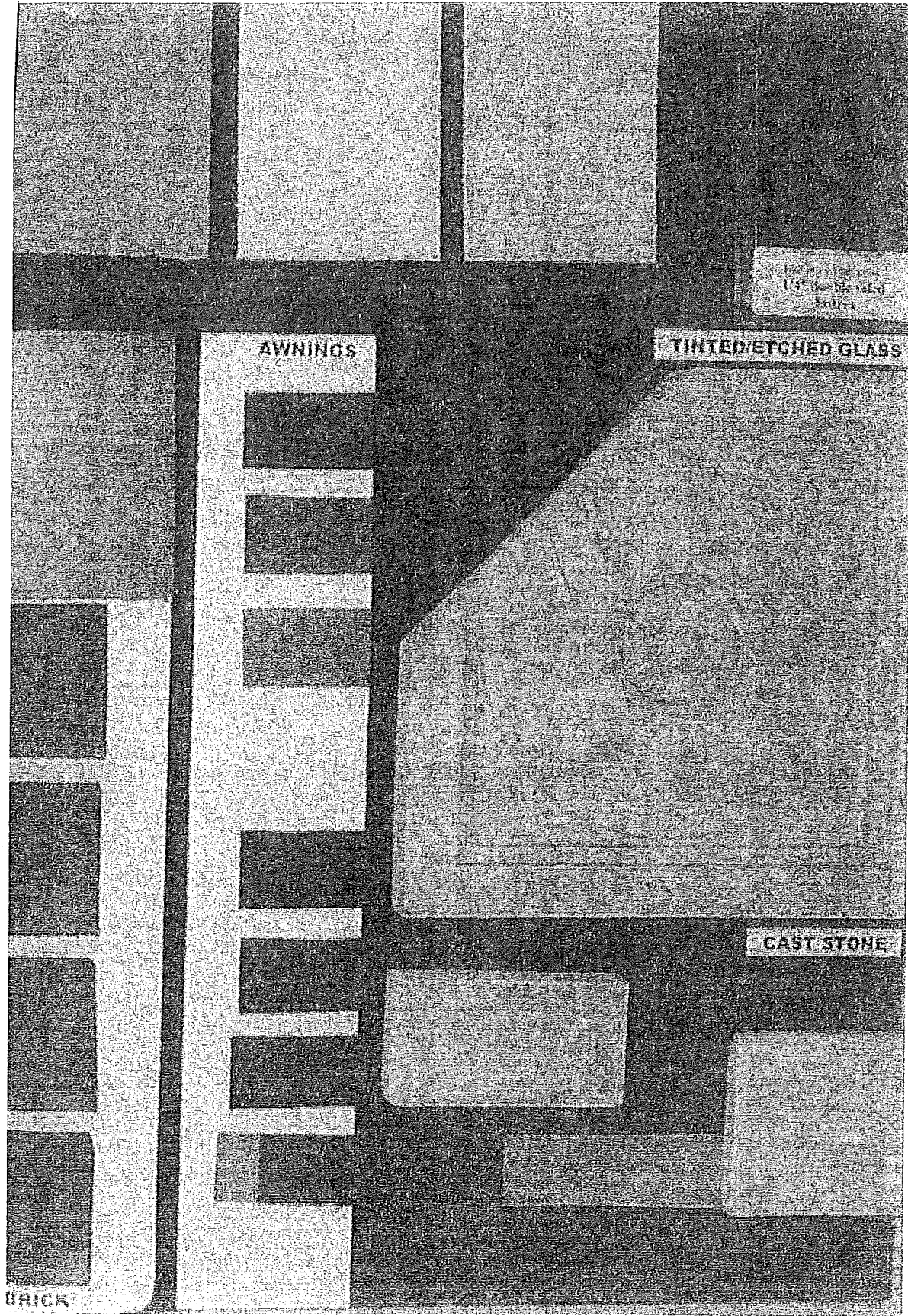


EXHIBIT E

Signage Concepts

GENERAL REGULATIONS BASED ON BUSINESS CENTER QUALIFICATION:

Sign allocation formula:

Gross site acreage: 12.4 ac.
 Longest road frontage: 779.60'
 Allowable sign area: greater of $780' / 10 \times 6 = 468$ sq. ft. or $13 \times 60 = 780$ sq. ft.
 Additional sign area (not to exceed 200 sq. ft.): 200 sq. ft.

Tienken Road frontage: $780' / 10 \times 2 = 156$
 North Rochester Road frontage: $558' / 10 \times 2 = 112$
 268

Minimum setback from proposed right-of-way = 10'
 Maximum wall sign ht. = 20'
 Maximum ground sign ht. = 7'
 Maximum single sign area: 100 sq. ft.
 Maximum Number of ground signs: 2 / road frontage

Note: A sign allocation chart will be submitted to the City of Rochester Hills for review once the tenants are under lease

Entry Ground Signs -

- Quantity: 4 locations: (2 / road frontage) not to exceed 200 sq ft total.
- Each sign will contain no more than 4 tenant names.
- Maximum height: 7'-0"

Wall Signs - (Type A - E)

- Maximum allowable area: 780 sq. ft.
- Individual signs will not exceed 100 sq. ft.

Sign Type "A".....ANCHOR TENANTS (Over 14,000 sq. ft. Lease Area): One "A" sign per building frontage. (Frontage defined as a building elevation that faces either a parking area or a pedestrian walkway)

A1. Maximum Letter Height - 48"H
 (25,000 + sq. ft. Lease Area)

A2. Maximum Letter Height - 36"H
 (14,000 + sq. ft. Lease Area)

"A" Signs may be either
 Channeled letters - Internally illuminated
 Metal formed letters - Halo lit

Sign Type "B".....RETAIL SHOPS AND RESTAURANTS (Less than 14,000 sq. ft. Lease Area): One "B" sign per building frontage. (Frontage defined as a building elevation that faces either a parking area or a pedestrian walkway)

B1. Maximum Letter Height - 24"H
 (+9,000 sq. ft. Lease Area)

B2. Maximum Letter Height - 18"H
 (+4,500 sq. ft. Lease Area)

B3. Maximum Letter Height - 12"H
 (+1,200 sq. ft. Lease Area)

"B" Signs may be

Cut out metal letters - Face illuminated or indirectly illuminated.

Sign Type "C".....RETAIL SHOPS AND RESTAURANTS (Alternative to Type "B"): Tenant may substitute a Type "C" sign for any allowable Type "B" sign.

"C" Signs may be

Plaque Signs - Face illuminated or letters internally illuminated with opaque surround.
 Plaque Signs to be proportionally correct to storefront façade.

Plaque area never to exceed 36 sq. ft.
 Sign Type "D".....ALL TENANTS to Type "A", "B" or "C": Any tenant may substitute "D" Sign for any allowable "A", "B" or "C"

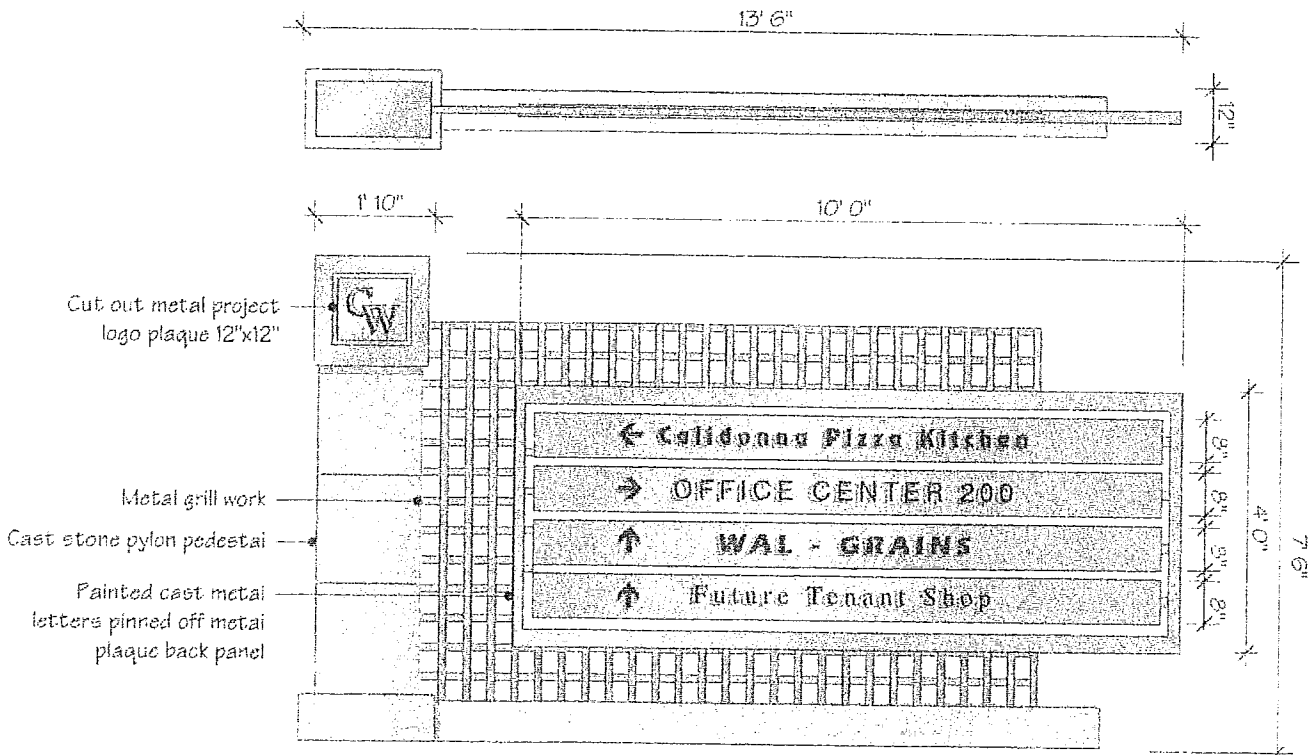
"D" Signs may be
 Glass mounted - Sign letters apply to storefront glass.
 Face illuminated or lit from art lighting.
 Maximum letter size - 12"H.

Applied to awning - Sign left directly to storefront awning.
 Face illuminated or unlit.
 Maximum letter size - 18"H.

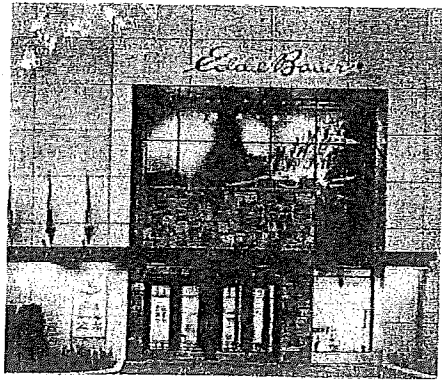
Sign Type "E".....ALL TENANT combination with "A", "B" and "C" Signs, capped building frontage.

Bracket signs - Mounted perpendicular and
 2 sided - Face illuminated.
 Maximum copy size not to exceed 2 sq. ft. p
 Maximum signboard not to exceed 9' x 6'

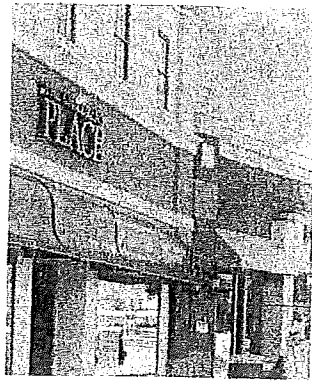
IN ANY EVENT ALL SIGNS ARE SUBJECT TO OWNER REVIEW FOR COMPLIANCE WITH GUIDELINES AND OVERALL ARCHITECTURAL AMBIANCE OF THE PROJECT AND ALL OPINIONS AND JUDGEMENTS ARE FINAL



1 MONUMENT SIGN - PLAN AND ELEVATION
 NOT TO SCALE



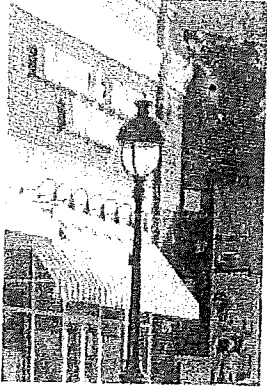
TYPE "A"
Metal Formed Letters, Halo Lit



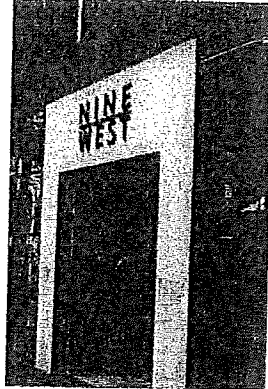
TYPE "A"
Channel Letters, Internally Illuminated



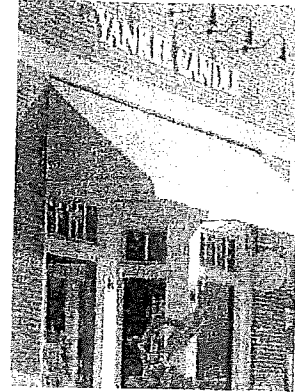
TYPE "A"
Metal Formed Letters, Halo Lit



TYPE "A"
Channel Letters, Internally Illuminated



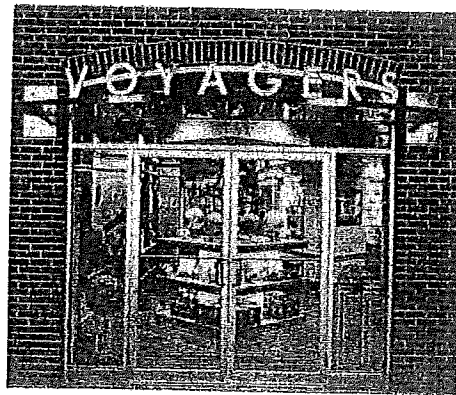
TYPE "B"
Metal, Face Illuminated



TYPE "B"
Metal, Direct Lit



TYPE "B"
Metal, Face Illuminated



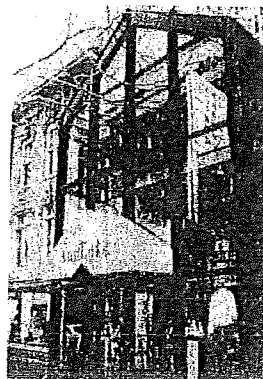
TYPE "B"
Metal, Internally Face Illuminated -



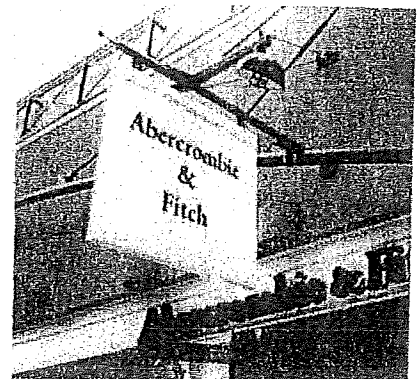
TYPE "C"
Plaque, Direct Lit



TYPE "C" - Plaque



TYPE "D" - Applied to Awning



TYPE "C" - Bracket, Face Illuminated

LINER 37059 PG 758