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Beier Howlett

PROFESSIONAL CORPORATION

June 21, 2013

****Via Email to All Parties****

Mayor Bryan K. Barnett
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

**Re: *G&V Investments' Request to Eliminate the City Place Planned
Unit Development Agreement; City File 02-027***

Dear Mayor Barnett and City Council:

Our office is legal counsel to the Eddington Property Owners Association (EPOA). As you know, EPOA has been actively involved in discussions over the past couple of years regarding the concept of G&V attempting to realign Eddington Blvd. with Drexelgate.

We had numerous meetings with City administration and staff, MDOT, the developer and others. We have requested on a number of occasions to be advised as to if and when any changes are proposed to the City regarding the property at issue, including the PUD itself. Suffice it to say, EPOA was shocked and unhappy when one of its members noticed on the June 24, 2013 Council Agenda that the PUD issue is in front of City Council for discussion, said discussion including a request to eliminate the PUD and seeking other steps to realign Eddington Blvd. We are confounded as to why neither I nor the EPOA Board were notified of this development and had to stumble across it as if the EPOA has no interest in this matter.

I write this letter to you not only to voice our concerns as to how this has been handled, but also to make sure that you and City Council are aware of a few matters. First, members of the EPOA will be present at the meeting along with Keith Jablonski from my office. The purpose of the attendance will be to listen, but to also renew the objection to the realignment of Eddington Blvd. with Drexelgate.

Also of great importance is the fact that the City Council agenda packet includes the 2004 City Place Planned Unit Development Agreement, which was the original PUD Agreement for this project. Counsel for G&V, in its letter to you, only mentioned in passing that in 2010 the PUD was amended. However, such a comment understates the 2010 Agreement. The 2010 City Place Amended and Restated Planned Unit Development Agreement specifically supersedes the original 2004 PUD in its entirety and replaced it with the 2010 PUD Agreement. Please see paragraph 1 and 20 which sets forth the import of the 2010 PUD. We believe it to be ironic that the PUD Agreement that is currently in place was not even part of the agenda packet for you and City Council to consider. Only the superseded and replaced 2004 PUD Agreement was included. Thus, I have enclosed a copy of the 2010 PUD. While not being accusatory, we find great irony that the 2004 PUD Agreement is what was given to City Council for consideration and the one that is actually in place. That said, our suspicion is, in large part, due to paragraph 11D of the 2010 PUD. This paragraph reads as follows:

200 East Long Lake Rd., Suite 110, Bloomfield Hills, MI 48304-2328
TELEPHONE: (248) 645-9400 FACSIMILE: (248) 645-9344
www.bhlaw.us.com

Beier Howlett

Mayor Bryan K. Barnett
City of Rochester Hills
June 21, 2013
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D. Owner agrees that at the time of the submission of an applicable site plan in the future, Owner (or the applicant if the site plan is submitted by a party other than Owner) will consider the possible realignment of Eddington Boulevard for the purpose of facilitating the installation of a traffic signal. This provision does not bind the parties to such realignment, but is intended to ensure that the parties consider such possible realignment when an applicable site plan is submitted. Any such realignment must be acceptable to Owner, the City, MDOT or such other applicable agency with jurisdiction over Rochester Road, and the Eddington Property Owners Association.

(Emphasis Added)

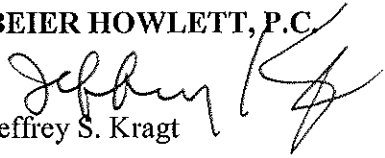
This paragraph is not pointed out in G&V's legal counsel's communication. It is our belief that G&V wishes the City Council to take action notwithstanding the very clear directive that any realignment must be approved by the EPOA. EPOA's objection to the realignment is not new and all of the parties involved in this discussion have been made well aware of EPOA's position, both at meetings and in writing.

It is truly unfortunate that the developer is attempting to do an "end-run" around the EPOA's protected interest in the alignment of Eddington Blvd. First, through an improper attempt to rezone the property (to remove the PUD) and now by asking City Council to consider doing away with the PUD Agreement. Again, EPOA reiterates its objection to the realignment and believes that its objection should be recognized at the City Council meeting, along with the developer's attempt to do an "end-run" around the appropriate approval process.

Please forward to members of the City Council before the June 24, 2013 meeting. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.


Jeffrey S. Kragt

JSK/jc

cc: Eddington POA
Mr. Edward Anzek, Director of Planning & Economic Development
Ms. Tina Barton, City Clerk
Mr. John D. Staran, City Attorney

**CITY PLACE
AMENDED AND RESTATED
PLANNED UNIT DEVELOPMENT AGREEMENT**

This Amended and Restated Planned Unit Development Agreement ("Agreement") dated 11-16, 2010, is made between G&V Investments, LLC ("G&V" or "Owner") whose address is 2565 Rochester Road, Rochester Hills, Michigan 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, Michigan 48309.

This Agreement is based on the following recitals which the parties acknowledge are true and relied upon by the parties in the making of this Agreement.

RECITALS:

A. Owner owns approximately 27.48 acres of land located in the City of Rochester Hills, more particularly described on the attached Exhibit A ("G&V Land"). Bank owns approximately 1.26 acres of vacant land, more particularly described on the attached Exhibit B ("Bank Land"), which it purchased from Owner. The G&V Land and the Bank Land shall be collectively referred to as the "Land," comprising approximately 28.74 acres in the aggregate, and the development on the Land shall be referred to as the "Project."

B. In 2004, in compliance with the requirements of the Rochester Hills Zoning Ordinance, Section 138-1 *et. seq.* of the Rochester Hills Code of Ordinances ("Zoning Ordinance"), the City approved a Planned Unit Development for the Land, known as "City Place" ("Original City Place PUD"), and the Land was rezoned to B-2 with a PUD overlay.

C. The recitals in the Original City Place PUD Agreement stated the following as reasons for adopting the planned unit development:

III. A PUD is necessary to develop the Land because it provided greater design flexibility and benefit to the City and the Owners than standard zoning, including the following benefits:

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.

D. The Original City Place PUD contained modifications of Zoning Ordinance requirements, including changes to setback, area, and height requirements, as described therein, allowing the development of up to 710,177 square feet of new building space.

(E) In approving the Original City Place PUD, the City determined that the development plans, uses and conditions of the Original City Place PUD were reasonable, promoted the public health, safety, and general welfare of the citizens of Rochester Hills, and were consistent with the surrounding uses and the intent of the City's Master Land Use Plan.

(F) Upon approval of the Original City Place PUD, the City found that all relevant provisions of the Zoning Ordinance had been satisfied, granted full and final PUD approval and rezoned the Land with PUD overlay zoning pursuant to the Zoning Ordinance. The City also rezoned the Land to the B-2 zoning classification, for the sole reason that the PUD Ordinance in effect at that time required that the Land be rezoned to a zoning classification that would permit all the uses approved in the PUD.

G. Bank developed the Bank Land within two years after approval of the Original City Place PUD by constructing a Fifth Third Bank branch, which is presently operating on the Bank Land.

(H) Subsequent to the approval of the Original City Place PUD, Owner attempted to develop and market the Land with the Original City Place PUD, without success. There was simply no market for a development with a mixture of commercial, office and/or residential uses in the same buildings.

What Knowledge & Encourages Terms

I. Subsequent to the approval of the Original City Place PUD, the City modified its Zoning Ordinance, in part to create Flexible Business Overlay Districts.

J. When the City modified its Zoning Ordinance, it overlaid the Land with the FB-2 Flexible Business Overlay zoning classification for the sole purpose of supporting the mixed uses set forth in the Original City Place PUD. FB-2 is the only zoning classification in the new Zoning Ordinance that would permit the mixed use development set forth in the Original City Place PUD. The B-2 zoning and the FB-2 overlay were not intended to, and do not represent the future desired land uses or zoning requirements for the Land, and were only intended to facilitate the mixed use development set forth in the Original City Place PUD.

K. As a result of the failure of the Original City Place PUD, Owner has requested that the City modify the Original City Place PUD to provide more flexibility in land use, building location and building design, to enable the G&V Land to be developed as a productive use in accordance with the City's Master Land Use Plan.

L. As consideration for modifying the Original City Place PUD, Owner has agreed to the following concessions:

1. Allow the more restrictive FB-1 zoning classification to control the development of the Land instead of the existing FB-2 overlay;
2. Reduce the overall density of the Project to that permitted by the FB-1 overlay zoning district, subject to certain modifications permitted by this Agreement;
3. Reduce the allowable building heights for the Project; and
4. Increase certain building setbacks to the adjacent Eddington Farms subdivision.

M. Owner has requested that the City modify the Original City Place PUD by replacing the development plan attached to the original PUD Agreement with the Land Use Site Plan attached hereto at Exhibit C, and approving the other modifications to the Original City Place PUD Agreement as set forth herein, and the City has agreed to do so, on the terms and conditions of this Agreement.

N. The Rochester Hills Planning Commission, after giving proper notice, held a public hearing on July 6, 2010, which public hearing was tabled and concluded on July 13, 2010, and subsequently recommended approval of this Agreement and the Land Use Site Plan to modify the Original City Place PUD on July 27, 2010.

O. The Rochester Hills City Council, at a meeting duly held on September 20, 2010, adopted a resolution approving this Agreement and the Land Use Site Plan as an amendment to the Original City Place PUD Agreement.

P. The City desires to ensure that the Land is developed and used in accordance with the terms of this Agreement and all applicable laws and regulations.

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

1. Approval of Amended and Restated City Place PUD. The parties acknowledge and agree that this Agreement amends and restates the Original City Place PUD, which is superseded in its entirety by this Agreement, that the development plan in the Original City Place PUD is replaced with the attached Land Use Site Plan, and that the Land is currently zoned B-2 with a FB-2 overlay and the PUD overlay as amended by this Agreement. The Owner's rights to develop the Property as provided for in this Agreement and the Exhibits attached to this Agreement are fully vested upon the City's execution of this Agreement, subject only to obtaining site plan approval for the Project, obtaining conditional land use if required by this Agreement, and obtaining the required permits under City Ordinances.

2. Applicable Zoning Ordinance Standards. Except as otherwise set forth in this Agreement, the use and development of the G&V Land shall be subject to the requirements of the FB-1 zoning overlay district as set forth in Article 8 of the Zoning Ordinance.

3. Permitted Uses. The Land may be used only for residential, retail, office, restaurant and other uses in accordance with the following criteria:

A. No more than 45,000 square feet of retail and restaurant uses shall be allowed on the Land, and such uses shall be allowed only in the areas so designated on the Land Use Site Plan. In the event any single retail/restaurant building is proposed to exceed 12,500 square feet in size, or is proposed to be located closer than 50 feet to Eddington Boulevard, then the development of such building(s) shall be subject to conditional land use approval by the Rochester Hills City Council.

B. The density of office and residential uses on the Land shall be controlled by the FB-1 requirements of the Zoning Ordinance. The location

of office and residential uses shall be as set forth on the Land Use Site Plan.

C. There shall be no drive through facilities on the Land except for banks, credit unions and other financial institutions, which shall be permitted.

D. There shall be no taverns, bars, nightclubs, cocktail lounges, discotheques, dance halls, or any other establishment selling alcoholic beverages for on-premises consumption on the Land; provided, however, the foregoing shall not prohibit the operation of restaurants where the sale of alcoholic beverages comprises no more than thirty-five (35%) percent of the restaurant's gross revenues. The posted hours of operation of any restaurant that sells alcoholic beverages shall not be earlier than 7:00am, or later than 11:00pm Sunday through Thursday, and midnight on Friday and Saturday.

E. The parties acknowledge that the total square footage of all buildings that may be constructed on the Land is difficult to measure, because such density is dependent upon the amount of square footage allocated to the different permitted uses: retail/restaurant, office, and residential. Nonetheless, the development of the Land shall not exceed the following maximum densities:

- (i) 500,000 square feet maximum if developed exclusively as multi-family residential units. No retail, restaurant or office.
- (ii) 430,000 square feet maximum if developed with 45,000 square feet of retail/restaurant, 25,000 square feet of office and 360,000 square feet of multi-family residential units.
- (iii) 350,000 square feet maximum if developed exclusively as office. No retail, restaurant or residential.

If the Land is developed as a mixed use development with a different allocation of uses than as set forth in (ii) above, then the 430,000 square foot maximum density will be adjusted, either higher or lower, depending upon the square footages allocated among the permitted uses. The resulting density of the permitted uses will continue to be controlled by this Agreement and the FB-1 requirements of the Zoning Ordinance, and will in no event exceed the density limits resulting from the application of the FB-1 design standards (as such FB-1 design standards are modified by Sections 4, 5, 9 and 11 below). The densities in this Section 3.E. include the 4,300 square foot office use allocated to the Fifth Third Bank on the Bank Land.

4. Building Setbacks. The allowable setbacks for any building in the Project shall be subject to the requirements of the FB-1 standards of the Zoning Ordinance, with the exception of the following:

A. Residential buildings may be located no closer than 50 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan.

B. Office buildings may be located no closer than 100 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan.

C. Retail and restaurant buildings may be located no closer than 200 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan.

D. Notwithstanding the foregoing to the contrary, residential and/or office buildings may be located anywhere within that portion of the Land north of the Eddington Farms subdivision and east of the Bank Land.

5. Building Height. The allowable height for any building in the Project shall be subject to the requirements of the FB-1 standards of the Zoning Ordinance, with the exception of the following:

A. The portion of any residential buildings located between 50 feet and 100 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan, may be up to, but shall not be higher than two stories, or 30 feet above grade. The portion of any residential buildings located more than 100 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan, may be up to, but shall not be higher than three stories, or 45 feet above grade.

B. The portion of any office buildings located between 100 feet and 150 feet from the boundary between the Land and the Eddington Farms subdivision, as shown on the Land Use Site Plan, may be up to, but shall not be higher than two stories, or 30 feet above grade. The portion of any office buildings located more than 150 feet from the boundary between the Land and the Eddington Farms subdivision, or north of the Detroit Edison Easement and east of the Bank Land as shown on the Land Use Site Plan, may be up to, but shall not be higher than three stories, or 45 feet above grade.

C. Notwithstanding the foregoing to the contrary, retail, restaurant, residential and/or office buildings located anywhere else on the

Land other than as set forth in Sections 5A or 5B above, may be up to, but shall not be higher than 45 feet above grade. Any buildings used solely for retail and/or restaurant uses shall not exceed two stories. Any buildings used for residential, office, or mixed retail/office uses shall not exceed three stories.

6. Architectural Standards and Building Materials. The architectural style, colors and materials used for any retail or restaurant or office building located within the blue area shown on the Land Use Site Plan shall be harmonious and compatible in style and quality with the existing Fifth Third Bank branch on the Bank Land and shall also conform to the Flexible Business Zoning Overlay Section 138-8.502. The architectural style, colors and materials used for all buildings located in the yellow area shown on the Land Used Site Plan shall be designed in accordance with the building material standards set forth in the Flexible Business Zoning Overlay Section 138-8.502, which may include partial brick/stone/masonry and partial wood siding/hardiplank facades as primary building materials. All elevations must be approved by the Planning Commission through the site plan approval process.

7. 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.

8. Wetlands. Wetlands regulated by the Michigan Department of Natural Resources and Environment ("MDNRE") will be protected and mitigated as required under applicable MDNRE regulations. This Agreement does not authorize or allow a decrease or reduction in the wetland mitigation requirements under MDNRE regulations. The development of the Land shall also be subject to the City's wetland ordinance, if applicable, as determined at the time of final site plan approval for the development of any area of the Land proposed for any portion of a regulated wetland.

9. Natural Features Setback. The natural features setback requirements Section 1 of Article 9 of the Zoning Ordinance shall be modified to permit a setback of five (5) feet from any regulated wetland or other natural feature on the G&V Land.

10. Open Space and Landscaping.

A. Open space and landscaped areas shall be determined as part of site plan approval. The landscape buffer on the eastern boundary of the Land adjacent to the Eddington Farms subdivision shall be thirty-five (35') feet in width at a minimum adjacent to any one or two story residential building, and fifty (50') feet in width at a minimum adjacent to any office building or any three story

residential building. No improvements, other than utilities, shall be located within such landscape buffer. The berms and landscaping within this landscape buffer shall constitute a "green" wall as defined in Section 138-12.300.B. (Note 2) of the City's Zoning Ordinance. As part of this landscape buffer, the existing berms on the site will be enhanced in certain areas adjacent to any office building if deemed necessary during the site plan approval process, and existing landscaping shall remain to the extent reasonably possible, it being the Owner's intent to retain such existing landscaping. For any approved site plan for Land adjacent to the Eddington Farms subdivision, if reasonably possible and approved by the City's Forestry Department, the landscape buffer shall be installed before, or as soon as possible after construction commences.

B. Owner acknowledges that the landscaped island at the entrance of Eddington Boulevard at Rochester Road ("Island") is maintained by the Eddington Property Owners Association ("Association"), and agrees that the Association shall continue to have the right and obligation to maintain the sign and the landscaping within the Island in accordance with the recorded Eddington Farms Subdivision Declaration of Restrictions, the Amended and Restated Bylaws of the Association, and any other applicable recorded documents.

11. Right of Way; Vehicular Access.

A. The development of the Project shall recognize a seventy-five (75') foot right of way from the section line of Rochester Road. To the extent such right of way has not been granted, the Owner shall dedicate the right of way at the time of site plan approval for any property adjacent to Rochester Road. Owner also agrees to negotiate in good faith any easements that the City, or the agency with jurisdiction over Rochester Road may need at the time of any Rochester Road improvements. The Rochester Road setback for any building adjacent to Rochester Road, and any other measurements pursuant to City Ordinances shall be measured from the west property line of the Land.

B. The City shall permit one new curb cut from the G&V Land to Rochester Road south of Eddington Boulevard and north of the adjacent Bordine's property, in a location to be determined in the site plan review process. The parties acknowledge that the location of such curb cut is also subject to the approval of the Michigan Department of Transportation ("MDOT"). If warrants are met, the Owner shall request that MDOT install a traffic signal at the location of such curb cut.

C. The G&V Land shall be developed so that there is continuous cross access for vehicular traffic between Eddington Boulevard and the adjacent Bordine's property (if permitted by the owner of the Bordine's property). Such cross access may, but need not be a Minor Street, and

shall not be a Major Street (as such terms are defined in Section 138-8.300 of the Zoning Ordinance).

D. Owner agrees that at the time of the submission of an applicable site plan in the future, Owner (or the applicant if the site plan is submitted by a party other than Owner) will consider the possible realignment of Eddington Boulevard for the purpose of facilitating the installation of a traffic signal. This provision does not bind the parties to such realignment, but is intended to ensure that the parties consider such possible realignment when an applicable site plan is submitted. Any such realignment must be acceptable to Owner, the City, MDOT or such other applicable agency with jurisdiction over Rochester Road, and the Eddington Property Owners Association.

12. Street and Utility Construction. All streets and utilities (water, wastewater, sewage and storm water collection and treatment facilities) shall require the approval of the City Engineer at the time of site plan approval, including the construction of utilities under pavement and landscape areas. Security for construction and maintenance of all streets and utilities shall be provided in accordance with applicable City Ordinances.

13. Fifth Third Bank. The City acknowledges and agrees that the Fifth Third Bank branch developed on the Bank Land is in compliance with the Original City Place PUD Agreement and the Zoning Ordinance, and that the development of the Bank Land in accordance with the site plan for the Bank Land approved by the City and the use of the Bank Land for a bank with drive-thru lanes and are also in compliance with this Agreement. Nothing in this Agreement shall in any way affect the existing development of the Bank Land, or impose any additional restrictions on the Bank Land.

14. Signage. The size, location, and types of signs to be used in the Project shall require a city sign permit at the time of final site plan approval. All signs shall comply with the City's Sign Ordinance.

15. Eddy House. Located on the G&V Land at 1585 S. Rochester Road is a house commonly known as the Eddy House, which was formerly designated as a noncontiguous historic district until such historic district was eliminated by the Rochester Hills City Council on July 26, 2010. Owner agrees not to demolish or remove the house from its current location before September 20, 2011, or until a site plan requiring removal of the house is approved, whichever occurs earlier. Owner also agrees to donate the house and contribute \$20,000 toward the restoration of the house to any person or organization that relocates the house to another site at its expense.

16. Notice. All notices required herein shall be in writing, either hand-delivered with the receipt of delivery, or by certified mail, return receipt requested, or by nationally recognized overnight courier service as follows:

For the City:	City of Rochester Hills Attention: Planning Director, E. Anzek 1000 Rochester Hills Drive Rochester Hills, Michigan 48309
For Owner:	G&V Investments, LLC Attention: William Gilbert 2565 Rochester Road Rochester Hills, MI 48307
Copy to:	John D. Gaber Williams, Williams, Rattner & Plunkett, P.C. 380 N. Old Woodward Avenue, Suite 300 Birmingham, MI 48009
For Bank Copy to:	Fifth Third Bank c/o Corporate Facilities 38 Fountain Square Plaza MD 10 ATA 1 Cincinnati, Ohio 45263

Delivery shall be deemed to have been made upon receipt by the recipient of such notice. Any party may change its address above upon written notice to the other parties in accordance with this Section 16.

17. Governmental Approvals. The City agrees to provide Owner 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 Project 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 Owner 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 Project. Owner shall submit final site plans to the Rochester Hills Planning Commission for final review and approval. All site plans shall also be subject to the review and approval of the City Engineer and the Rochester Hills Fire Department.

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:

A. 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 this Agreement, and the City's rules and design standards to the extent they are not inconsistent with this Agreement and final site plan approval.

B. 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.

C. 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.

D. Temporary and final certificates of occupancy will be issued for the Project in accordance with applicable City ordinances in effect when such certificates of occupancy are requested.

E. 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 17E shall be included within any dedication or conveyance to the City.

F. 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.

18. Development Sequence and Timing.

A. The parties agree and acknowledge that this Agreement is being entered into to approve future development of the G&V Land in accordance with the parameters set forth in the Land Use Site Plan attached at Exhibit C, with the actual land uses, configuration, dimensions and other specific details of future development to be determined at the time one or more site plans for development of the G&V Land are submitted to the City for the development of the Project. The parties acknowledge that market conditions may change over time, which could cause the Owner to change its plans and/or timing with respect to the development of the Project. The parties further acknowledge that the G&V Land may be developed in accordance with one or more site plans submitted over time, and in one or more phases. Site improvements reasonably necessary or reasonably related to any particular building, including without limitation road improvements, parking, storm drainage facilities, sidewalks and landscaping, will be made at the time of construction of such particular building, as determined through the site plan review process. The Owner shall only be obligated to make those site improvements that are required to support the development of the improvements set forth in the submitted site plan, and not for other areas of the Project.

B. Given the uncertain real estate market conditions that exist, the Owner shall have three (3) years from the date of this Agreement to submit a site plan for all or any portion of the Project. The Owner may obtain up to two one-year extensions upon good cause shown. The first requested extension shall be submitted to City Staff for administrative approval, and the second requested extension shall be submitted to the Planning Commission for approval. Provided that the Owner is proceeding in good faith to develop the Project in light of existing economic conditions, and is otherwise in compliance with this Agreement and City Ordinances, the City will not unreasonably refuse to extend the above time periods for a reasonable time. In the event the Owner has not submitted a site plan within three (3) years from the date of this Agreement, subject to any extensions granted by City as provided above, then the City may issue an Abandonment Notice and may proceed in accordance with Section 18.C. below.

C. In the event the Project is not "substantially completed" within ten (10) years from the date of this Agreement, and the City believes that the Owner has abandoned the Project and is not operating in good faith to substantially complete the Project, then the City may issue a notice of abandonment ("Abandonment Notice") to the Owner. If the Owner fails to deliver a written response to the Abandonment Notice ("Abandonment Notice Response") disputing the City's claim that the Owner has abandoned the Project within thirty (30) days after receipt of the Abandonment Notice, then the City may initiate the rezoning of any of the Land which has not been developed according to an approved site plan, plat or condominium ("Undeveloped Land"), to the FB-1 or similar zoning classification that permits office and multi-family development. If, within such thirty

(30) day period, the Owner delivers an Abandonment Notice Response to the City disputing the City's claim that the Owner has abandoned the Project, then the City may either retract its Abandonment Notice in a writing delivered to the Owner, or within a reasonable time after receipt of the Abandonment Notice Response, the City may request the Owner to appear before City Council to discuss the matter, which shall be scheduled not sooner than upon thirty (30) days written notice to the Owner. After such appearance, if the City believes the Owner has failed to show that it is proceeding in good faith to develop the Project in light of existing economic conditions, and has failed to offer a reasonable plan to substantially complete the Project, then the City may elect to initiate an action in Oakland County Circuit Court for declaratory relief and to rezone the Undeveloped Land to the FB-1 or similar zoning classification that permits office and multi-family development. Notwithstanding the foregoing to the contrary, this Section 18.C. shall not apply to any portion of the Land that has been developed according to an approved site plan, plat or condominium, which portion of the Land shall be vested with all rights under this Agreement. The term "substantial completion" (or any derivation thereof), shall mean that more than seventy-five percent (75%) of the Land has been developed.

19. 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.

20. Entire Agreement, Binding on Future Owners. This Agreement constitutes the entire agreement between the Owners and the City as to the subject matter of this Agreement, and supersedes the Original City Place PUD Agreement and the development plan attached thereto, and 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.

21. Zoning Ordinance Requirements. Except as set forth in this Agreement, the Project shall be developed in accordance with the City Code of Ordinances. In the event this Agreement or the Land Use Site Plan is inconsistent with the City Code of Ordinances, regulations or design standards, then this Agreement and the Land Use Site Plan shall control. Regulations governing permitted uses of land, density, design, improvement and construction standards and specifications applicable to development of the Land shall be the regulations in force at that time, except to the extent such regulations are inconsistent with this Agreement and/or the Land Use Site Plan, in which case this Agreement and the Land Use Site Plan shall control. This Agreement shall not prevent the City from applying new or amended regulations that do not conflict with this Agreement and the Land Use Site Plan..

22. Minor Modifications. There may be a need in the future to make minor changes to any approved site plans for the G&V Land, and Owner may request such modifications. For purposes of expediency, minor modifications to such site plans shall be reviewed and approved by City Staff, provided that the height, density and location of buildings and uses as permitted under the Land Use Site Plan shall not be modified by City Staff. Minor modifications may include, without limitation: (a) 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 the density limitations set forth in Section 3.E. above; (c) changes in floor plans which do not alter the character of the use; and (d) internal rearrangement of parking lots and/or reduction or parking spaces if in conformance with applicable parking standards. 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 review and approval, with Owner having the right to appeal the Planning Commission's determination to City Council.

23. 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.

24. Severability. In the event that any provision of this Agreement is found to be void, illegal, or invalid for any reason, the remaining provisions nevertheless remain in full force and effect. If any changes in federal or state law or regulations enacted after the date of this Agreement operate to prevent compliance with this Agreement, or render compliance impractical or unreasonably difficult, the inconsistent provisions of this Agreement shall be modified, deleted or suspended upon agreement of the parties as necessary to conform to such changes in federal or state law.

25. 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.

26. 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.

27. 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

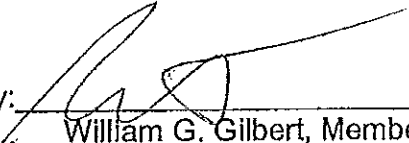
faith or in conformity with this Agreement, then the Court may order reasonable costs and attorney fees incurred to the prevailing party. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

28. Amendment. This Agreement shall be amended in accordance with Section 138-7.109 of the City's Zoning Ordinance.

[signatures on following pages]

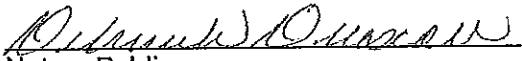
The parties execute this City Place Amended and Restated Planned Unit Development Agreement on the date set forth above.

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

By: 
William G. Gilbert, Member

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing was acknowledged before me on 10-18
2010, by William G. Gilbert, Member of G&V Investments, LLC, a Michigan limited liability company, on behalf of the company.


Notary Public,
OAKLAND County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 7-25-11

City Place
Amended and Restated Planned Unit Development Agreement
Signature Pages (continued)


FIFTH THIRD BANK

By: 
Jeffrey Wagner
Vice President

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing was acknowledged before me on October 29
2010, by Jeffrey Wagner, Vice President of Fifth Third Bank, an Ohio Banking Corp., on
behalf of the corporation.

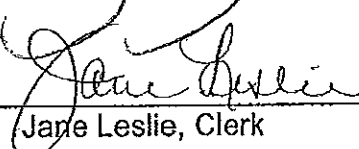
FAITH SIMSICK
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES May 2, 2013
ACTING IN COUNTY OF Oakland


Notary Public,
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: May 2, 2013

City Place
Amended and Restated Planned Unit Development Agreement
Signature Pages (continued)

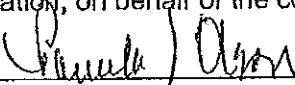
CITY OF ROCHESTER HILLS,
a Michigan municipal corporation

By: 
Bryan Barnett, Mayor

By: 
Jane Leslie, Clerk

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing was acknowledged before me on November 16,
2010, by Bryan K. Barnett and Jane Leslie, Mayor and City Clerk, respectively, of the City
of Rochester Hills, a Michigan municipal corporation, on behalf of the corporation.


Notary Public,
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 4.15.12

PAMELA T. OLSON

Notary Public, Oakland County, MI
My Commission Expires 04-15-2012

Prepared by and When Recorded Return to:

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

EXHIBIT A

G&V LAND LEGAL DESCRIPTION

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

Beginning at a point which is N89°32'00" E 286.15 ft. along the East-West ¼ line of Section 23 and N 00°28'00" E 1.84 ft.; and N 01°55'10" E 58.82 feet from the West ¼ corner of Section 23, T.3N., R.11E.; thence S 89°38'30" W 30.00 feet; thence N 01°55'10" E 60.00 ft.; thence N 89°38'30" E 30.00 ft.; thence N 01°55'12" E 213.52; thence N 89°37'35" E 615.67 feet along (in part) the South line of "Yorktowne Commons Sub." (Liber 206 of Plats, Pages 13 through 19, both inclusive, Oakland County Records); thence S 01°55'12" W 249.71 ft. along the West line of "Eddington Woods Sub." (Liber 287 of Plats, Pages 21 through 25, both inclusive, Oakland County Records); thence S 89°38'30" W (S 85°53'06" W Record) 615.66 ft.; thence S 01°55'10" W 23.97 ft. to the point of beginning.

Containing 155,363 Square Feet --- 3.567 Acres, more or less.

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

Beginning at a point which is N 01°50'00" W 2.36 ft. along the West line of Section 23 and N 85°52'55" E 66.05 ft. from the West ¼ corner of Section 23, T.3N., R.11E.; thence N 85°52'55" E 409.33 ft.; thence S 01°48'43" E 437.73 ft.; thence Westerly 8.72 ft. along the arc of a curve to the right (Radius of 535.00 ft., central angle of 00°56'01", long chord bears N 83°57'43" W 8.72 ft.); thence Westerly 87.82 ft. along the arc of a curve to the left (Radius of 605.00 ft., central angle of 08°19'02", long chord bears N 87°39'12" W 87.74 ft.); thence Westerly 51.57 ft. along the arc of curve to the right (Radius of 645.00 ft., central angle of 04°34'52", long chord bears N 89°31'17" W 51.56 ft.); thence N 87°13'52" W 262.17 ft.; thence N 01°48'43" W 390.70 ft. along a line parallel with and 66 ft. East to the West line of Section 23 to the point of beginning.

Containing 169,509 Square Feet --- 3.891 Acres.

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

Beginning at a point which is N 01°50'00" W 2.36 ft. along the West line of Section 23 and N 85°52'55" E 66.05 ft. and S 01°48'43" E 498.70 ft. from the West ¼ corner of Section 23, T.3N., R.11E.; thence N 88°11'17" E 124.90 ft.; thence Easterly 103.53 ft. along the arc of a curve to the left (Radius of 650.00 ft., central angle of 09°07'34"; long chord bears N 83°37'30" E 103.42 ft.); thence Easterly 162.88 ft. along the arc of a curve to the right (Radius of 535.00 ft., central angle of 17°26'35", long chord bears N 87°47'01" E 162.25 ft.); thence Easterly 18.92 ft. along the arc of a curve to the left (Radius of 605.00 ft., central angle of 01°47'31", long chord bears S 84°23'28" E 18.92 ft.); thence S 01°48'43" E 715.81 ft.; thence S 59°07'28" E 99.29 ft.; thence N 88°11'17" E 46.44 ft.; thence S 01°48'43" E 16.68 ft.; thence S 81°07'54" E 227.22 ft.; thence S 85°24'12" E 83.08 ft.; thence N 87°59'50" E 155.57 ft.; thence N 80°48'07" E 85.23 ft.; thence S 13°28'04" E 53.77 ft.; thence N 85°49'14" E 310.85 ft.; thence N 58°24'40" E 67.57 ft.; thence N 82°36'50" E 150.54 ft.; thence S 04°06'47" E 235.44 ft.; thence S 05°57'15" W 93.62 ft.; thence S 87°59'50" W 1611.68 ft.; thence N 01°48'43" W 1144.11 ft. along a line parallel with and 66 ft. East of the West line of Section 23 to the point of beginning.

Containing 854,661 Square Feet --- 19.620 Acres.

Part of the West ½ of Section 23, Town 3 North, Range 11 East, Rochester Hills, Oakland County, Michigan, being more particularly described as follows:

Beginning at a point which is North 01 degrees 55 minutes 12 seconds East (North 01 degrees 50 minutes 00 seconds East recorded) 2.36 feet along the West line of Section 23 and North 89 degrees 38 minutes 14 seconds East (North 85 degrees 52 minutes 54 seconds East recorded) 66.05 feet to the East R.O.W. line of Rochester Road (66 feet wide ½ R.O.W.) from the West ¼ corner of Section 23; thence North 01 degrees 55 minutes 12 seconds East (North 01 degrees 50 minutes 00 seconds West recorded) 82.81 feet; thence North 89 degrees 38 minutes 30 seconds East (North 85 degrees 53 minutes 11 seconds East recorded) 190.00 feet; thence South 01 degrees 55 minutes 25 seconds West 23.97 feet; thence North 89 degrees 38 minutes 30 seconds East 30.00 feet; thence South 01 degrees 55 minutes 10 seconds West 58.82 feet; thence South 89 degrees 38 minutes 14 seconds West (South 85 degrees 52 minutes 54 seconds West recorded) 220.00 feet to the POINT OF BEGINNING. Containing 0.40 Acres.

EXHIBIT B

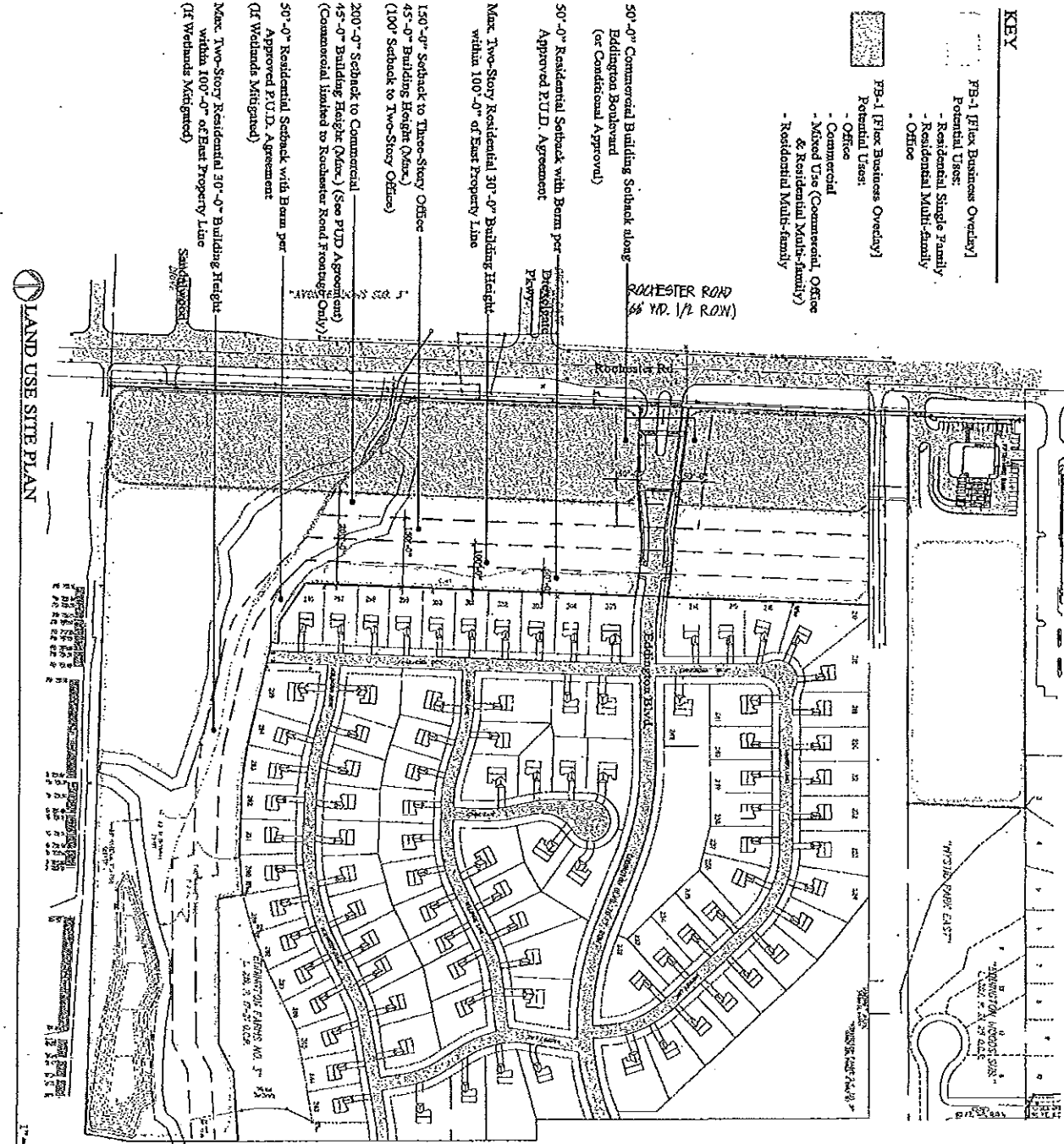
BANK LAND LEGAL DESCRIPTION

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

Beginning at a point which is N 89°32'00" E 66.07 ft. along the East-West ¼ line of Section 23 to the East R.O.W. line of Rochester Road (66 ft. wd. ½ R.O.W.) and N 01°55'12" E (N 01°50'00" W Record) 85.05 ft. along said East R.O.W. line of Rochester Road (66 ft. wd. ½ R.O.W.) from the West ¼ corner of Section 23, T.3N., R.11E.; thence continuing N 01°55'12" E 249.49 ft. (N 01°50'00" W 250.07 ft. Record) along said East R.O.W. line of Rochester Road (66 ft. wd. ½ R.O.W.); thence N 89°37'35" E (N 85°53'06" E Record) 220.00 ft.; thence S 01°55'10" W 249.55 ft.; thence S 89°38'30" W (S 85°53'06" W Record) 220.00 ft. to the East R.O.W. line of Rochester Road (66 ft. wd. ½ R.O.W.) also being the point of beginning.

Containing 54,850 Square Feet --- 1.26 Acres, more or less.

EXHIBIT C
LAND USE SITE PLAN
(See Attached)

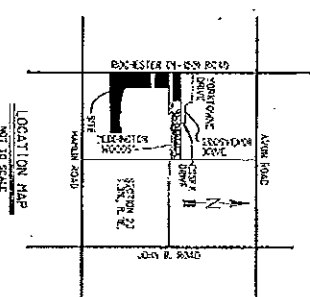


KEY

- PS-1 [Flex Business Overlay]
- Potential Uses:
 - Residential Single Family
 - Residential Multi-Family
 - Office
- PS-1 [Flex Business Overlay]
- Potential Uses:
 - Office
 - Commercial
 - Mixed Use (Commercial, Office & Residential Multi-Family)
 - Residential Multi-Family

LAND USE SITE PLAN

NOTES:
 Potential uses shown are for discussion purpose only. Ultimate uses are subject to the amended P.U.D. agreement, the Flex Business overlay requirements & city processing of final site plan approval.



SP-1	City Place	LAND USE SITE PLAN
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Client: G & V Investments, LLC	Project: Rochester Rd, Michigan
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Scale: 1" = 100'-0"	Date: 11/11/11	Author: [Name]	Checker: [Name]	Reviewer: [Name]	Approver: [Name]
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