

CITY OF ROCHESTER HILLS

FIRST AMENDMENT TO PLANNED UNIT DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO PLANNED UNIT DEVELOPMENT AGREEMENT, is made and entered into effective as of the _____ day of _____, 2013, by and among the City of Rochester Hills, a Michigan municipal corporation ("City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, and CITY WALK, LLC, a Michigan limited liability company ("Developer") as successor in interest to TIENKEN PARTNERS, LLC, a Michigan limited liability company) whose address is 37020 Garfield, Suite T-1, Clinton Township, Michigan 48036.

RECITALS

A. **WHEREAS**, the Developer has developed property which constitutes approximately 12.4 acres of neighborhood retail shopping at the southeast corner of Rochester Road and Tienken Roads in the City ("Property");

B. **WHEREAS**, the Planned Unit Development Agreement dated June 29th, 2005 by Developer and City ("Agreement") does not permit mixed residential and commercial use buildings, Developer and City desire to accommodate mixed use residential and commercial buildings at the Property as outlined herein;

NOW, THEREFORE, the Developer and the City 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 First Amendment To Planned Unit Development Agreement.

2. Section 4.(9) of the Agreement is deleted in its entirety and the following is substituted in its place:

4.(9) Restaurants or other places serving food or beverage, provided that the maximum square footage of all restaurants in the Project shall not exceed thirty-five (35%) 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.

3. Section 4 of the Agreement is amended by inserting the following at the end of Section 4:

(15) Residential dwelling units if located on the 2nd floor or above.

4. Section 12 of the Agreement is deleted in its entirety and the following is substituted in its place:

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, except for the following changes:

- Allowable sign area per site & sign standards shall be per the City's currently existing Code of Ordinances, Article VI of Chapter 134-181.

- Ground floor tenants in Building D facing Rochester Road shall be allowed to place signs above the expression line separating the ground floor from the upper floors, can exceed the width of the storefront bay so long as they are placed in a clear signable & architecturally continuous area, and the allowable sign area shall be calculated as 15% of Building or Tenant Façade with a 2.00 applicable setback factor.

- Additional permitted sign types include:

- Projecting Signs: Per the City's existing sign ordinance Section 138-8.603 for Flex Business Overlay Districts, except projecting signs may be mounted above the second floor window sill in Building D and the entire sign area of the projecting sign shall fit inside an imaginary rectangle with a maximum area of 20 square feet, and may project no more than 48 inches beyond the face of the building wall.

- Restaurant Menu Signs: Per the City's existing sign ordinance Section 138-8.603 for Flex Business Overlay Districts.

- A-Frame Signs: Per the City's existing sign ordinance Section 138-8.603 for Flex Business Overlay Districts, except such signs may be located on walkways or internal landscape areas.

- Permanent Perpendicular Banner Signs: Per the City's existing sign ordinance Section 138-8.603 for Flex Business Overlay Districts.

- Existing monument signs in the Project shall be permitted to have changeable or electronic message devices of no larger size than 32 square feet placed on top of the existing panel area on the monument sign structure or in lieu of existing panels on said structure. Electronic message signs may display multi-colored messages where the words, letters or pictures are not in motion and are not changed more often than every ten seconds.

All other 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. Notwithstanding the foregoing to the contrary, the parties agree that the Project identification signs located on the archways on the Renderings 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.

5. Section 14(4) of the Agreement is deleted in its entirety and the following substituted in its place:

(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, except the parking requirements for the residential dwelling unit areas in the Project shall be 1.5 parking spaces per dwelling unit. The ground floor parking area underneath the residential dwelling units in Building D shall be counted as parking areas and not as building area.

6. Section 14 of the Agreement is amended by inserting the following at the end of the Section 14:

(6) Buildings in the Project taller than the height limit in the B-2 zoning district shall be permitted, subject to obtaining conditional land use approval from the City, so long as no part of the building (with the exception of architectural features, antennae's or other projections that cover less than 10% of the roof area of the building) may penetrate the sky plane which is a line drawn at a 45-degree angle from a point 50 feet from the property line and 30 feet above grade level at the 50 foot setback line. In no case shall any part of the building be taller than seventy (70) feet.

7. No Prior Defaults. Developer and City hereby acknowledge and warrant that no prior default (or defaults) presently exists under the Agreement and each party is presently in good standing with respect to the Agreement. Furthermore, the Agreement is in full force and effect and hereby ratified.

8. Conflict: In the event of conflict, between the Agreement and this First Amendment to Planned Unit Development Agreement, the later shall prevail.

IN WITNESS WHEREOF, the parties hereto by and through their duly authorized representatives have executed this Agreement as of the day and year first above written.

In the Witness of:

DEVELOPER:

City Walk, LLC, a Michigan limited liability company

By: _____
Paul Aragona,

Its: Manager

CITY:

CITY OF ROCHESTER HILLS, a Michigan Municipal corporation

By: _____

Its: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of City Walk, LLC, a Michigan limited liability company, on behalf of said limited liability company.

Notary Public

County, MI
My Commission Expires: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, the _____ and _____, the _____ of the City of Rochester Hills, a Michigan municipal corporation, on behalf of said municipal corporation.

Notary Public

County, MI
My Commission Expires: _____
My Commission Expires: _____