

PRO AGREEMENT

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PLANNED REZONING OVERLAY (PRO) AGREEMENT
NOVI MILE GR/BECK

THIS PLANNED REZONING OVERLAY (PRO) AGREEMENT (this “Agreement”) is made as of March ____, 2010, by and among NOVI MILE, LLC, a Michigan limited liability company, whose address is 46100 Grand River Avenue, MI 48374, and CP NOVI CENTER, LLC, a Michigan limited liability company whose address is 46100 Grand River Avenue, MI 48374 (jointly referred to as “**Owners/Developers**”), and the CITY OF NOVI, 45175 West Ten Mile Road, Novi, MI 48375-3024 (“**City**”).

RECITATIONS:

- I. Owners/Developers are the fee owners of the “Land” described on **Exhibit A**, attached and incorporated herein. The Land is made up of various separate parcels of property. For purposes of this Agreement, the Land includes one parcel of property that is being developed with a gas station and market with a drive-through restaurant (the “Gas Station Parcel”) and certain other parcels (the “Adjacent Novi Mile Parcels”). The Gas Station Parcel is approximately 1.81 acres in area, and is *part* of Parcel No. 22-16-176-030 and is described on **Exhibit B**. The Adjacent Novi Mile Parcels consist of the remaining part of Parcel No. 22-16-176-030 (approximately 2.49 acres in area) and also Parcel Nos. 22-16-176-017 and 22-16-176-031 and are described on **Exhibit C**.
- II. For purposes of improving and initially using the 1.81-acre Gas Station Parcel for an approximately 6,820 square foot gas station and market with an attached drive-through restaurant, Owners/Developers petitioned the City for an amendment of the Zoning Ordinance to reclassify the Gas Station Parcel from **OST**, Office Service Technology, to **FS**, Freeway Service District. The OST classification shall be referred to as the “**Existing Classification**” and the FS classification shall be referred to as the “**Proposed Classification**.”
- III. The Proposed Classification would provide the Owners/Developers with certain material development options with respect to the Gas Station Parcel that are not available under the Existing Classification, and that would be a distinct and material benefit and advantage to the Owners/Developers.

- IV. The City has reviewed the Owners/Developers' proposed petition to amend the zoning district classification of the Gas Station Parcel from the Existing Classification to the Proposed Classification under the terms of the Planned Rezoning Overlay (PRO) provisions of the City's Zoning Ordinance; has reviewed the Owner's proposed PRO Plan (including building façade, elevations, and design) attached hereto and incorporated herein as **Exhibit D** (the "PRO Plan"), which is a conceptual or illustrative plan for the potential development of the Gas Station Parcel under the Proposed Classification, and not an approval to construct the proposed improvements as shown; and has further reviewed the proposed PRO Conditions offered or accepted by the Owners/Developers described in Paragraph V immediately below.
- V. In petitioning for rezoning to the Proposed Classification, Owners/Developers have expressed as a firm and unalterable intent that Owners/Developers will develop and use the Land, including both the Gas Station Parcel and the Adjacent Novi Mile Parcels, in conformance with the following conditions, referred to as the "**PRO Conditions**":
- A. Owners/Developers shall develop and use the Gas Station Parcel solely for an approximately 6,820 square foot gas station and market with an attached drive-through restaurant as set forth on the PRO Plan. Owners/Developers shall forbear from developing and/or using the Gas Station Parcel in any manner other than as authorized and/or limited by this Agreement; provided, however, that the owner of the Gas Station Parcel shall have the right to seek site plan approval and other development approvals for the gas station and related improvements in accordance with the Zoning Ordinance without the requirement of obtaining the approval of the owner(s) of the Adjacent Novi Mile Parcels (if different from the owner(s) of the Gas Station Parcel). Nothing herein shall be deemed a limitation on the owner of the Gas Station Parcel's right to request additional modifications to the improvements to be constructed on the Gas Station Parcel, in accordance with the PRO provisions of the City's Zoning Ordinance without the requirement of obtaining the approval of the owner(s) of the Adjacent Novi Mile Parcels. Any material changes to the PRO Plan, as determined by the City, shall require amendment of this PRO Agreement.
- B. Subject to the terms and conditions of this Agreement and Section 3401, *et seq.*, of the Zoning Ordinance Owners/Developers shall develop the Gas Station Parcel in accordance with all applicable laws, ordinances, and regulations pertaining to such development, including all applicable height, area, and bulk requirements of the Zoning Ordinance as relates to the Proposed Classification, except as expressly authorized herein.

The PRO Plan is acknowledged and agreed by both the City and Owners/Developers to be a conceptual plan for the purpose of depicting

the general area contemplated for development on the Gas Station Parcel, as well as other related improvements on the Adjacent Novi Mile Parcels. Site plan approval for the development is separately required. Some deviations from the provisions of the City's ordinances, rules, or regulations are depicted in the PRO Plan and are approved by virtue of this Agreement. However, except as to such specific deviations enumerated herein, the development of the gas station and market with an attached drive-through restaurant on the Gas Station Parcel under the requirements of the Proposed Classification shall be subject to and in accordance with all applications, reviews, approvals, permits, and authorizations required under applicable laws, ordinances, and regulations pertaining to such development—including, but not limited to, site plan approval, storm water management plan approval, woodlands and wetlands permits, façade approval, landscape approval and engineering plan approval, and payment of review and inspection fees and performance guarantees, all in accordance with the terms of the applicable ordinances pertaining to the such development--except as expressly provided in this Agreement.

The building design, façade, and elevations shall be substantially similar (as determined by the City) to that submitted as part of the Owners/Developers' final approval request, as depicted in **Exhibit D**, or as may be approved during site plan review.

- C. In connection with any development of the Gas Station Parcel, Owners/Developers shall seek and obtain approval for all storm water and soil erosion requirements as required under the City's Code of Ordinances, and shall utilize best management practices to the extent practicable.
- D. Owners/Developers shall provide the following **Public Benefits/Public Improvements** in connection with the development of the Land:

(1) Conveyance of Right-of-Way for a Collector Road. The parties acknowledge and agree that a fundamental purpose of this PRO Agreement is to document the Owners/Developers' intention, in connection with the rezoning approval of the Gas Station Parcel, to construct at no cost to the City a three-lane public Collector Road from Beck Road to Grand River Avenue (the "Collector Road") and to convey by warranty deed to the City in connection with the Collector Road a 60-foot wide right-of-way, , together with a 5-foot public utility easement on each side of the right-of-way ("Collector Road Right-of-Way").

With the exception of the portion of the Collector Road Right-of-Way along and adjacent to the frontage of the Gas Station Parcel, which shall be built as shown on the PRO Plan at the time of development of the Gas Station Parcel if that development occurs first, and also with the exception

of the access points on Grand River and on Beck Road, which shall be and remain in the locations shown on the PRO Plan, the location of the Collector Road is shown on the attached **Exhibit E** as a conceptual configuration. The City acknowledges that the exact configuration of the Collector Road (other than the gas station portion) shall be determined in connection with the future development of the Adjacent Novi Mile Parcels. Owners/Developers agree that even if the configuration of the Collector Road changes, the Collector Road improvements shall: (a) provide the access points from Grand River Avenue and Beck Road in the locations shown on **Exhibit D**; and (b) comply with the design and construction standards for roads within the City of Novi.

As further described in subparagraphs (2) and (3) below, the parties expect that the Owners/Developers will construct the portion of the Collector Road abutting/adjacent to the Gas Station Parcel at the time of development of the Gas Station Parcel (which is expected to occur before the development of the Adjacent Novi Mile Parcels), and that the remainder of the Collector Road will be constructed with the subsequent development of the *first* of the Adjacent Novi Mile Parcels, or any portion or part thereof, to be developed. The parties further intend that the right-of-way for the Collector Road will be conveyed to the City in connection with the construction of each part of the Collector Road.

In order to ensure the construction of the entire Collector Road and the conveyance of the Collector Road Right-of-Way for the portion of the Collector Road that is not constructed with the gas station development (i.e., the portion to be constructed on the Adjacent Novi Mile Parcels), Owners/Developers shall place into escrow with an escrow agent mutually agreed to by the parties a deed and easement for the entire Collector Road Right-of-Way at the location and in the configuration shown in **Exhibit E**. The deed and easement shall be in a form acceptable to the City and Owners/Developers and shall be substantially in accordance with the form of deed and easement attached hereto as **Exhibit E**. However, as provided in subparagraph 3 below, as to that part of the Collector Road not built with the gas station development, the location of the Collector Road Right-of-Way may be altered or shifted by agreement of the parties. The conditions and circumstances under which the deed and easement may be removed from escrow and recorded are set forth below.

Owners/Developers acknowledge that approximately one-half (30 feet) of the proposed Collector Road Right-of-Way along the frontage of the Gas Station Parcel, as well as other areas of the Collector Road, are located on the property to the south of the Gas Station Parcel, Parcel No. 22-16-176-033. Owners/Developers shall be responsible to secure a warranty deed for the entire proposed Collector Road Right-of-Way from the Owner of such parcel.

(2) Construction of a Portion of the Collector Road with Gas Station Development. If, as the parties expect, the development of the Gas Station Parcel occurs before development of any of the Adjacent Novi Mile Parcels, Owners/Developers shall construct the portion of the Collector Road that is shown on the PRO Plan, **Exhibit D**, as the access for the gas station development, at the time of the development of the gas station site and construction of the gas station (i.e., that portion that is part of or abutting/adjacent to the entire frontage of the Gas Station Parcel. Owners/Developers shall post the performance guarantees required by the City of Novi Code of Ordinances to construct the road as a site improvement to be dedicated to the City. This Collector Road shall be designed and built to public road standards as set forth in the City of Novi Code of Ordinances. The road and any related utilities shall be dedicated to and accepted by the City in accordance with the procedures set forth in the City's Code of Ordinances.

The Collector Road shall be constructed so as to provide a temporary cul-de-sac as shown on the PRO Plan, **Exhibit D**. The temporary cul-de-sac shall be built to the City's design and construction standards as set forth in the City of Novi Code of Ordinances; provided, however, that the cul-de-sac area is not required to be paved but may be gravel; and further provided that the Owners/Developers shall maintain such temporary cul-de-sac area, until such time as it has been accepted by the City.

Except as otherwise authorized by the City, the Owners/Developers shall tender the portion of the Collector Road constructed with the Gas Station development at the same time as its request for a certificate of occupancy, and shall undertake all activities, improvements, and efforts necessary to accomplish the acceptance as specified in the City's Code of Ordinances within a reasonable time of its initial commencement. The City agrees to accept such portion of the Collector Road as a public road when the requirements for dedication and acceptance set forth in the City's Code of ordinances have been met.

As part of its obligation in this subparagraph (2), Owners/Developers shall comply with all requirements of MDOT and/or the Road Commission for Oakland County (RCOC) to the extent that MDOT and/or RCOC has jurisdiction over the completion of such improvements and, to the extent that any permits are issued by MDOT and/or RCOC with respect to such improvements, Owners/Developers shall comply with any conditions or requirements identified in the permits issued by MDOT and RCOC for purposes of such improvements. In the event the access points shown on the attached **Exhibit E** are required by MDOT or RCOC to be altered or shifted, the City shall mutually and reasonably agree on an alternate

location that most closely provides the benefits of the location shown on **Exhibit E**.

(3) Construction of the Remainder of the Collector Road with Future Development. If, as the parties expect, the Gas Station Collector Road section is built first, Owners/Developers shall construct the remainder of the public Collector Road at the time the Owners/Developers commence Construction on any portion of any of the Adjacent Novi Mile Parcels. For purposes of this subparagraph (3), "Construction" shall mean the issuance of the initial permit for construction of any development or improvements of any kind on any of the Adjacent Novi Mile Parcels, as defined in the City's Code of Ordinances. This obligation to complete and convey the remainder of the Collector Road shall arise from or be the result of the development of any portion of the Adjacent Novi Mile Parcels as they exist at the time of this Agreement; provided, however, that the obligation shall not arise or result from storm water improvements on the Adjacent Novi Mile Parcels in connection with the development of the Gas Station Parcel

The final configuration and location of the Collector Road shall be determined in connection with the site plan approval for the first development of any portion of any of the Adjacent Novi Mile Parcels. The access points at Grand River Avenue and Beck Road shall be and remain in the locations set forth in the PRO Plan. The Collector Road shall comply with the design and construction standards and all other provisions of the City's Code of Ordinances.

Owners/Developers may not avoid the obligation to develop the road by splitting or dividing the parcels or seeking such a split or division. Owners/Developers expressly agree that no development approvals for any portion of the Adjacent Novi Mile Parcels, including but not limited to, rezoning, site plan approvals, environmental approvals/permits (woodland wetland), storm water permits, or the like, shall be authorized until the Collector Road Right-of-Way has been provided and the Collector Road has been built or has been otherwise provided for as part of the development approval process in a manner acceptable to the City.

To secure performance of this obligation, Owners/Developers shall post, at the same time required for posting of guarantees for site development in connection with the first development of any portion of the Adjacent Novi Parcels, the performance guarantees required by the City of Novi Code of Ordinances to construct the road as a site improvement to be dedicated to the City.

The remainder of the Collector Road shall be designed and built to public road standards as set forth in the City of Novi Code of Ordinances. The

Owners/Developers shall tender the portion of the Collector Road constructed pursuant to this subparagraph (3) at the same time as its request for a certificate of occupancy in connection with the construction of any improvements on any portion of the Adjacent Novi Mile Parcels abutting the Collector Road, and shall undertake all activities, improvements, and efforts necessary to accomplish the acceptance as specified in the City's Code of Ordinances within a reasonable time of its initial commencement. The City agrees to accept such portion of the Collector Road as a public road when the requirements for dedication and acceptance set forth in the City's Code of Ordinances have been met.

The City acknowledges that the Adjacent Novi Mile Parcels are not proposed to be developed with buildings or other improvements at this time. The only requirements with regard to the Adjacent Novi Mile Parcels relate to conveyance of the Collector Road Right-of-Way and requirements for construction of the Collector Road as set forth in this Agreement. The City further acknowledges that the obligations pertaining the Collector Road shall be the obligations of the Owners/Developers and their successors, transferees, and assigns as to the Adjacent Novi Mile Parcels, and shall not be an obligation of the owner of the Gas Station Parcel, if the owner of that parcel is different from Owners/Developers as a result of a conveyance.

If any portion of the Adjacent Novi Mile parcels is developed before the development of the Gas Station Parcel (i.e., if the gas station development does not occur first as contemplated by the parties, and the other adjacent properties are developed first), the entire Collector Road shall be constructed with the development of the *first* of the Adjacent Novi Mile Parcels to develop and the Collector Road Right-of-Way and the road shall be tendered for acceptance by the City in accordance with the City's Code of Ordinances in connection with such development.

(4) Limitations on Left Turns onto Beck Road. The PRO Plan (Exhibit D) does not contemplate limiting left turns in or out of the Gas Station Parcel. If the gas station development occurs before the development of the Adjacent Novi Parcels, the City has determined not to limit such turning movements in connection with that sole development at the time of site plan approval. However, the City retains all of its authority to regulate traffic and traffic movements at any time in the public health, safety, and welfare. Owners/Developers acknowledge that if any adjacent parcels are developed, or following completion and acceptance of the Collector Road linking Beck Road and Grand River Avenue, or if future traffic conditions in the area require, the City and/or RCOC shall have the right to limit or prohibit left turns out onto Beck Road, either as part of site plan approval for any future development or by way of appropriate traffic control action; provided, however, that nothing in this Agreement shall

preclude Owners/Developers from seeking approval for left turns out onto Beck Road under specified conditions (e.g., with additional Beck Road improvements, or at certain times) as part of the development/site plan approval or otherwise.

(5) Access Easement to Sanitary Sewer Force Main. Owners/Developers shall provide at the time of final site plan approval for the Gas station development an 18-foot wide Access Easement to allow access to the City's sanitary sewer force main over the east side of the Gas Station Parcel in the location shown on the PRO Plan. Such easement shall be in a form acceptable to the City. Owners/Developers, in connection with the Gas Station site improvements, will provide a mountable curb and pavement capable of supporting 35 tons to the MDOT right-of-way within the access easement area.

(6) Improvements to MDOT Storm Water Basin. In connection with Owners/Developers' development plans for the Gas Station Parcel, Owners/Developers shall make their good faith efforts to seek any necessary approvals to improve the existing basin located within the I-96 ROW and east of Beck Road to provide additional storm water quality and quantity treatment for the drainage basin area. The work contemplated may include deepening the basin to create a wet detention basin, to provide additional storage, and treatment for the Land and the public road ROW drainage (SPUI, Beck Road and Grand River Avenue). The storm water management system will be designed in accordance to the City of Novi's storm water standards. Minor improvements to the existing outlet structure may also be required as part of the basin's improvements.

The parties acknowledge that the necessary approvals and agreements have not been secured for the above-described improvements, and that such approvals and agreements may not be possible. The parties therefore agree that this provision does not impose a condition on Owners/Developers that such approvals be issued prior to commencement of development of the Adjacent Novi Mile Parcels. The City shall participate in any discussions or negotiations with MDOT; provided, however, that the City has no obligation to participate financially or otherwise in any specific improvements (e.g., a Chapter 4 or Chapter 20 drain).

In the event that all such approvals have been obtained in order to improve the MDOT storm water basin north of the Gas Station Parcel and adjacent to the I-96 freeway, Owners/Developers will retain any and all obligations to maintain the improvements in the basin, subject to the City's right (but not obligation) to perform necessary maintenance if Owners/Developers fail to do so and to charge the cost of doing so to Owners/Developers. Any and all improvements proposed to the MDOT storm water basin are

subject to review and approval by the City at the time of preliminary site plan review.

If no agreement is reached with MDOT by the time of preliminary site plan submittal, Owners/Developers shall provide for stormwater detention on the Adjacent Novi Mile Parcels as approved by the City at site plan review and in such event, the obligations on Owners/Developers under this Recital V(6) pertaining to the MDOT basin shall be deemed null and void and of no further force and effect. If the Owner/Developers utilize the Adjacent Novi Mile Parcels for stormwater detention for the Gas Station Parcel (or as between the Adjacent Novi Mile Parcels), the off-site easements and maintenance agreements to facilitate the construction and long-term maintenance of the basin and as required by the Novi Code Ordinances shall be executed and approved by the City prior to final site plan approval, all as required by the Novi Code of Ordinances.

- VI. The parties acknowledge that this Agreement contains terms and conditions in addition to the PRO Conditions, all of which are binding on Owners/Developers; provided, however, that in the event of a transfer of the Gas Station Parcel to a third party, such third party shall not have any obligations in connection with the requirements to convey the Collector Road Right-of-Way on the Adjacent Novi Mile Parcels or to build the remaining portion of the Collector Road on the Adjacent Novi Mile Parcels.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Each and every provision, representation, term, condition, right, and obligation set forth in the recitals is incorporated as a part of this Agreement.

Upon the Proposed Classification becoming final following entry into this Agreement, and as otherwise provided in the PRO Ordinance, Section 3401 *et seq.* of the City's Zoning Ordinance:

- a. No use of the Gas Station Parcel shall be allowed except the use shown on the PRO Plan, Exhibit D incorporated herein, for an approximately 6,820 square foot gas station and market with an attached drive-through restaurant. Site plan review for the development of the Gas Station Parcel is required. Material changes to the PRO Plan shall require an amendment to this PRO Agreement.
- b. Owners/Developers and their successors, assigns, and/or transferees shall act in conformance with the PRO Plan and PRO Conditions, including the provision of the Public Benefits/Public Improvements, all as described above and incorporated herein; provided, however, the obligations of the Owners/Developers relating to construction of the remainder of the Collector Road across the Adjacent Novi Mile Parcels shall not apply to

the owner of the Gas Station Parcel if different from the Adjacent Novi Mile Parcels.

- c. Owners/Developers and their successors, assigns, and/or transferees shall forbear from acting in a manner inconsistent with the PRO Plan and PRO Conditions, and the Public Benefits/Public Improvements, all as described in the Recitations above and incorporated herein; and
 - d. Owners/Developers shall commence and complete all actions necessary to carry out the PRO Plan and all of the PRO Conditions and Public Benefits/Public Improvements, all as described in the Recitations above and incorporated herein.
2. The following deviations from the standards of the City's Zoning Ordinance with respect to the Gas Station Parcel are hereby authorized pursuant to Section 3402.D.1.c of the City's Zoning Ordinance:
- (a) the required front yard parking setback of 20 feet shall be reduced to 10 feet;
 - (b) the required exterior side yard setback of 20 feet shall be reduced to 5 feet;
 - (c) the required interior side yard setback of 10 feet shall be reduced to 5 feet;
 - (d) required setback for the proposed dumpster of 10 feet shall be reduced to 5 feet;
 - (e) the required 3-foot tall berm along the Beck Road frontage is waived, provided that additional plantings as generally described on **Exhibit D** are installed in the right-of-way as reasonably required by the Planning Commission at the time of site plan approval;
 - (f) the required 3-foot tall berm along the I-96 frontage is waived, provided that additional plantings are installed in the right-of-way as reasonably required by the Planning Commission at the time of site plan approval;
 - (g) the required 3-foot tall berm along the access road frontage is waived, provided that a 3-foot tall wall is provided as generally depicted on **Exhibit D** and as shown on the PRO Plan;
 - (h) the interior parking lot landscaping is reduced by 333 square feet (2,687 square feet required, 2,356 square feet provided);

(i) the required building foundation planting on the south side of the building is waived;

(j) the required foundation planting area is reduced by 1,482 square feet (2,768 square feet required, 1,286 square feet provided);

(k) the end island at northwest corner of the site may be striped instead of landscaped;

(l) two same-side driveway spacing waivers are granted for the proposed access drives on the Collector Road (125 feet required, 90 feet and 61 feet provided);

(m) the signage identified on **Exhibit ____** shall be permitted. Any additional signs relating to uses on the Gas Station Parcel must comply with the City's Code of Ordinances. No off-premises advertising signs are permitted on the Gas Station Parcel. No signs advertising uses on the Gas Station Parcel shall be permitted on any other parcel.

(n) The gas station canopy shall include EIFS instead of flat metal panels as shown on the initial concept plan. The cultured stone columns on the canopy may be as shown, but the applicant shall endeavor to provide a minimum of 30% cultured stone on each canopy elevation at the time of Preliminary Site Plan review.

(o) Three (3) parking spaces at the center of the eastern-most row of parking shall be landbanked to provide additional space for landscaping and screening of loading zone.

3. Future Retail Service Overlay District. The City is currently in the process of amending its Master Plan for Land Use. The current draft of the Master Plan contemplates the establishment of a "Retail Overlay" District and corresponding regulations that is proposed to include some (but not all) of the Adjacent Novi Mile Parcels. If within eighteen (18) months of the date hereof a Zoning Ordinance amendment establishing a "Retail Overlay" District and regulations (or an amendment to a current Zoning District accomplishing the same results) that includes regulations allowing for at least 25% of the total floor area of the proposed overlay boundary as shown in the attached **Exhibit G** to be used for certain limited, specified retail uses (the Overlay Uses") is not adopted by the City, then the Owners/Developers shall be relieved of the obligations set forth in this Agreement to construct the Collector Road, but shall not be relieved of the obligations to convey the Collector Road Right-of-Way. The Overlay Uses shall include carwashes, convenience stores associated with fuel stations, restaurants, including fast food, sit-down, and drive-thru restaurants (but not including drive-in restaurants) and general retail and personal services. Notwithstanding any other regulations n the Retail Overlay District, one curb cut onto Grand River

shall be permitted in the area between the Grand River access point and Beck Road, in a location approved by the City and/or any other applicable agency.

4. Owners/Developers acknowledge and agree that the City has not required the submission of the PRO application, the PRO Plan, or the PRO Conditions, including the Public Benefits/Public Improvements. The PRO application, the PRO Plan, and the PRO Conditions, including the Public Benefits/Public Improvements, have been voluntarily offered by Owner in order to provide an enhanced use and value of the Land, including the Gas Station Parcel and the Adjacent Novi Mile Parcels, to protect the public safety and welfare, and to induce the City to rezone the Gas Station Parcel to the Proposed Classification so as to provide material advantages and development options for the Owners/Developers.
5. Each of the provisions, requirements and conditions in this Agreement represents a necessary and reasonable measure, which, when considered with all other conditions and requirements, is roughly proportional to the burdens and increased impact that will be created by the uses allowed by the approved rezoning to the Proposed Classification, taking into consideration the changed zoning district classification and the specific use authorization granted.
6. In the event the Owners/Developers attempt to proceed, or do proceed, with actions to complete improvement of the Gas Station Parcel in any manner other than as an approximately 6,820 square foot gas station and market and an attached drive-through restaurant as shown on **Exhibit D**, including the Gas Station portion of the Collector Road, other than as permitted under this Agreement, the City shall be authorized to revoke all outstanding building permits and certificates of occupancy issued for such building and use on the Gas Station Parcel.
7. In addition to the provisions in Paragraph 6 above with respect to development of the Gas Station Parcel, in the event the Owners/Developers, or their respective successors, assigns, and/or transferees proceed with a proposal for, or undertake any other pursuit of, development of the Gas Station Parcel in a manner that is in material violation of the PRO Plan or the PRO Conditions, the City shall, following notice and a reasonable opportunity to cure, have the right and option to take action, using the procedure prescribed by law for the amendment of the Master Plan and Zoning Ordinance, to amend the Master Plan and zoning classifications of the Gas Station Parcel to a reasonable classification determined appropriate by the City, and neither the Owners/Developers nor their respective successors, assigns, and/or transferees, shall have any vested rights in the Proposed Classification and/or use of the Gas Station Parcel as permitted under the Proposed Classification; provided, however, that the obligations of the Owners/Developers pertaining the completion of the Collector Road and the development of the Adjacent Novi Mile Parcels shall only bind the owners of the Adjacent Novi Mile Parcels and shall not bind the owner of the Gas Station Parcel (if different from the Owners/Developers) Owners/Developers shall be estopped

from objecting to the rezoning and reclassification to such reasonable classification based upon the argument that such action represents a “downzoning” or based upon any other argument relating to the approval of the Proposed Classification and use of the Gas Station Parcel; provided, however, that this provision shall not preclude Owners/Developers from otherwise challenging the reasonableness of such rezoning as applied to the Gas Station Parcel.

If Owners/Developers, or their respective successors, assigns, and/or transferees, fail to comply with their obligations to provide the Collector Road Right-of-Way, or build the remaining portion of the Collector Road, or the entire Collector Road, with the *first* development of the any portion of any of the Adjacent Novi Mile Parcels, the City may refuse to issue any and all permits or approvals for development of the Adjacent Novi Mile Parcels until such obligations have been satisfied or otherwise provided for to the City’s satisfaction.

In the event Owners/Developers, or their successors, assigns, or transferees, attempt to proceed, or do proceed, with actions intended or designed to result in/or that do result in, any improvements to the Adjacent Novi Mile Parcels in any manner (other than storm water improvements in connection with the Gas Station Parcel, as and to the extent approved by the City) without complying with the obligations in this Agreement to provide the Collector Road Right-of-Way and to construct the Collector Road on the Adjacent Novi Mile Parcels, the City shall be authorized, but shall not be obligated, to remove the deed and easement from the Collector Road Right-of-Way from escrow and record it. The City shall not be obligated to construct the Collector Road. The Collector Road Right-of-Way shall be treated as right-of-way for purposes of all future development of the Adjacent Novi Mile Parcels. No development of the Adjacent Novi Mile Parcels shall be permitted without construction of the entire Collector Road.

8. By execution of this Agreement, Owners/Developers acknowledge that they have acted in consideration of the City approving the Proposed Classification on the Gas Station Parcel, and Owners/Developers agree to be bound by the provisions of this Agreement.
9. After consulting with an attorney, Owners/Developers understand and agree that this Agreement is authorized by and consistent with all applicable state and federal laws and constitutions, that the terms of this Agreement are reasonable, that they shall be estopped from taking a contrary position in the future, and that the City shall be entitled to injunctive relief to prohibit any actions by the Owners/Developers inconsistent with the terms of this Agreement.
10. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees. This Agreement shall be recorded with the office of the Oakland County Register of Deeds, and the rezoning to the Proposed Classification shall not become

effective until such recording has occurred. Material changes to the PRO Plan shall require amendment of this PRO Agreement.

11. The parties agree to work in good faith to implement the terms of this Agreement, to permit the development of the land in accordance with the terms hereof, and to meet as and when reasonably required in order to address issues of concern to either party in connection with the development of the land and the matters contemplated under this Agreement.
12. This Agreement has been duly authorized by all necessary action of the Owners/Developers and the City.
13. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided by law.
14. In the event that there is a failure by the Owners/Developers to timely perform any obligations undertaken required by this Agreement, the City shall serve written notice thereof setting forth such default and shall provide the Owners/Developers with the reasonable period of time to cure any such default.
15. 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.
16. If the rezoning of the Gas Station Parcel becomes void in the manner provided in the Ordinance and this Agreement, or if this Agreement is held by a court of competent jurisdiction to be void or of no force and effect, then the zoning classification pertaining to the Gas Station Parcel shall revert to the Existing Classification.
17. This agreement may be amended only as provided in the Zoning Ordinance, Section 3401, *et seq.*
18. This Agreement may be signed in counterparts.

(SIGNATURES ON NEXT PAGE)

THE UNDERSIGNED have executed this Agreement effective as of the day and year first written above.

NOVI MILE, LLC
a Michigan limited liability company

By: _____

Its: Managing Member

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this _____ day of _____, 2010, before me appeared _____, Managing Member of Novi Mile, LLC, a Michigan limited liability company who states that he has signed this document of his own free will, duly authorized on behalf of the company.

Notary Public

CP NOVI CENTER, LLC
a Michigan limited liability company

By: _____

Its: Managing Member

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this _____ day of _____, 2010, before me appeared _____ Managing Member of CP Novi Center, LLC, a Michigan limited liability company, who states that he has signed this document of his own free will duly authorized on behalf of the company.

Notary Public

CITY OF NOVI

Print Name:

By: _____
David B. Landry, Mayor

Print Name:

Print Name:

By: _____
Maryanne Cornelius, Clerk

Print Name:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this ____ day of _____, 2010, before me appeared David B. Landry and Maryanne Cornelius, who stated that they had signed this document of her own free will on behalf of the City of Novi in their respective official capacities, as stated above.

Notary Public

Drafted by:

Thomas R. Schultz
30903 Northwestern Highway
Farmington Hills, MI 48334

When recorded return to:

Maryanne Cornelius, Clerk
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

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