



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 2
July 2, 2007

SUBJECT:

Consideration of Referral to the Planning Commission of the Proposed Second Amendment to SDO Agreement with Hummer of Novi, located at the corner of Grand River Avenue and Meadowbrook Road, to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations.

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	N/A
AMOUNT BUDGETED	N/A
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	N/A

BACKGROUND INFORMATION:

Parking of non-Hummer vehicles on the “pads” along Meadowbrook Road and/or Grand River Avenue in front of the Hummer dealership has been subject of discussion at previous City Council meetings. The City has taken the position that the initial Development Agreement and subsequent SDO Agreement between the City and the Hummer developer limits the use of the property to the sale and display of Hummer vehicles. Hummer has taken the opposite position. (See the attached letter from Hummer’s attorney dated September 27, 2006.) The City believes that its position is correct and is supported by both agreements. (See the City’s response dated October 5, 2006.)

The City administration has discussed with Hummer a possible amendment to the SDO Agreement to deal with the issue. The City staff circulated to Hummer a draft agreement that would permit the sale of non-Hummer used vehicles from the property, but not their display on the pads in front of the building. Hummer has responded with a proposal that would allow the display of non-Hummer vehicles on pads in front of the building if the cars met certain criteria (were of \$20,000 or greater in value). A copy of each proposed amendment is attached for Council’s review.

The City administration does not endorse any particular approach or resolution. If Council determines to address the issue, the SDO Agreement requires that an amendment to the agreement be processed in the same manner as an original application for approval, including a review and recommendation by the Planning Commission and any required public hearings. (See Section XIV, Paragraph E.) In this case, the notations on which the City bases the prohibition on non-Hummer vehicles are found in the plans themselves, so Planning Commission action by way of recommendation is particularly appropriate. Because the change is proposed as an amendment to the text of the SDO Agreement, Council approval will be required following the Commission’s recommendation.

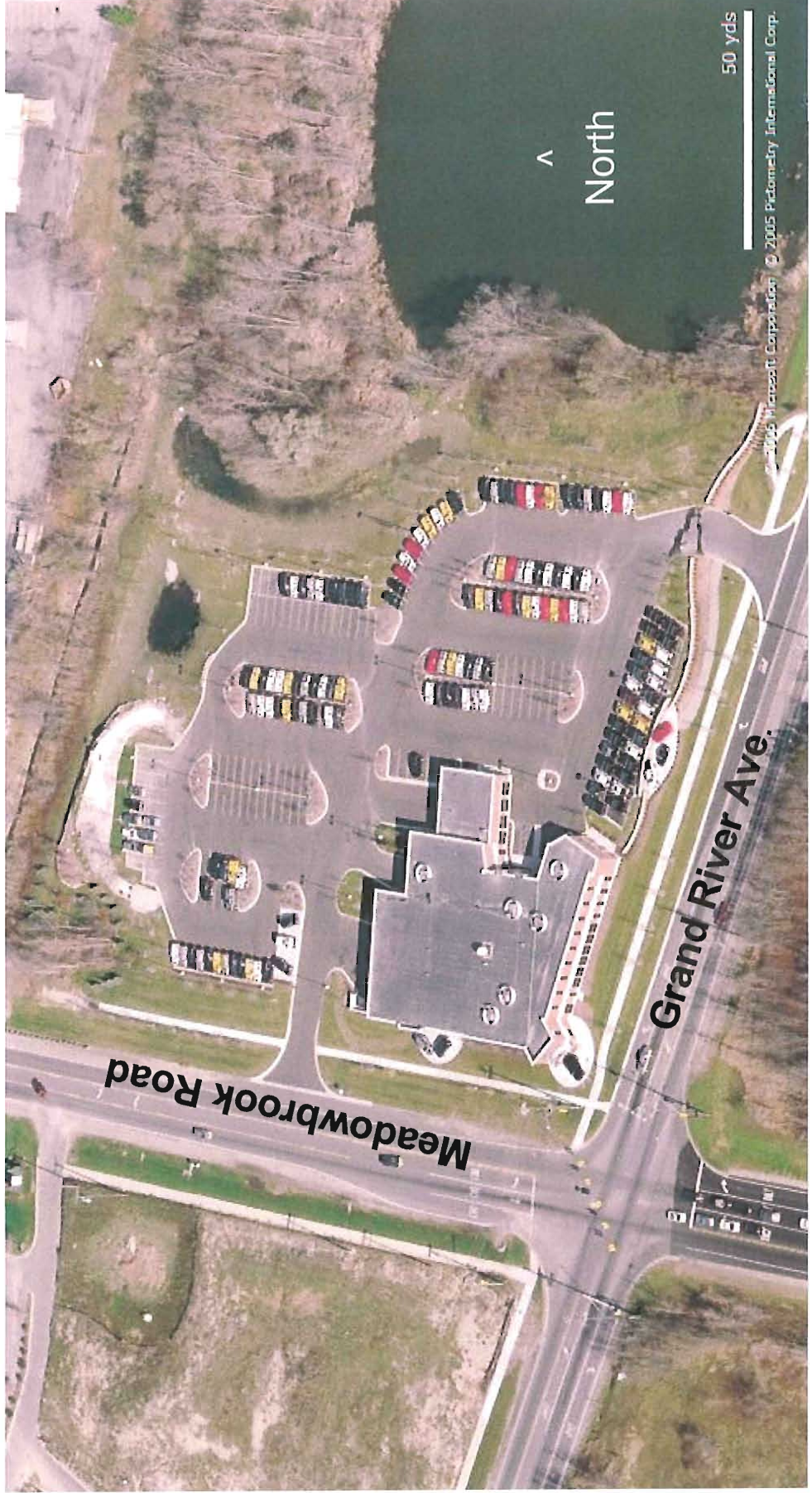
If the City Council desires to address the issue, it might want to provide some guidance to the Planning Commission along with the referral of the matter to the Commission.

RECOMMENDED ACTION

Consider Referral to the Planning Commission of the Proposed Second Amendment to SDO Agreement with Hummer of Novi, located at the corner of Grand River Avenue and Meadowbrook Road, to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

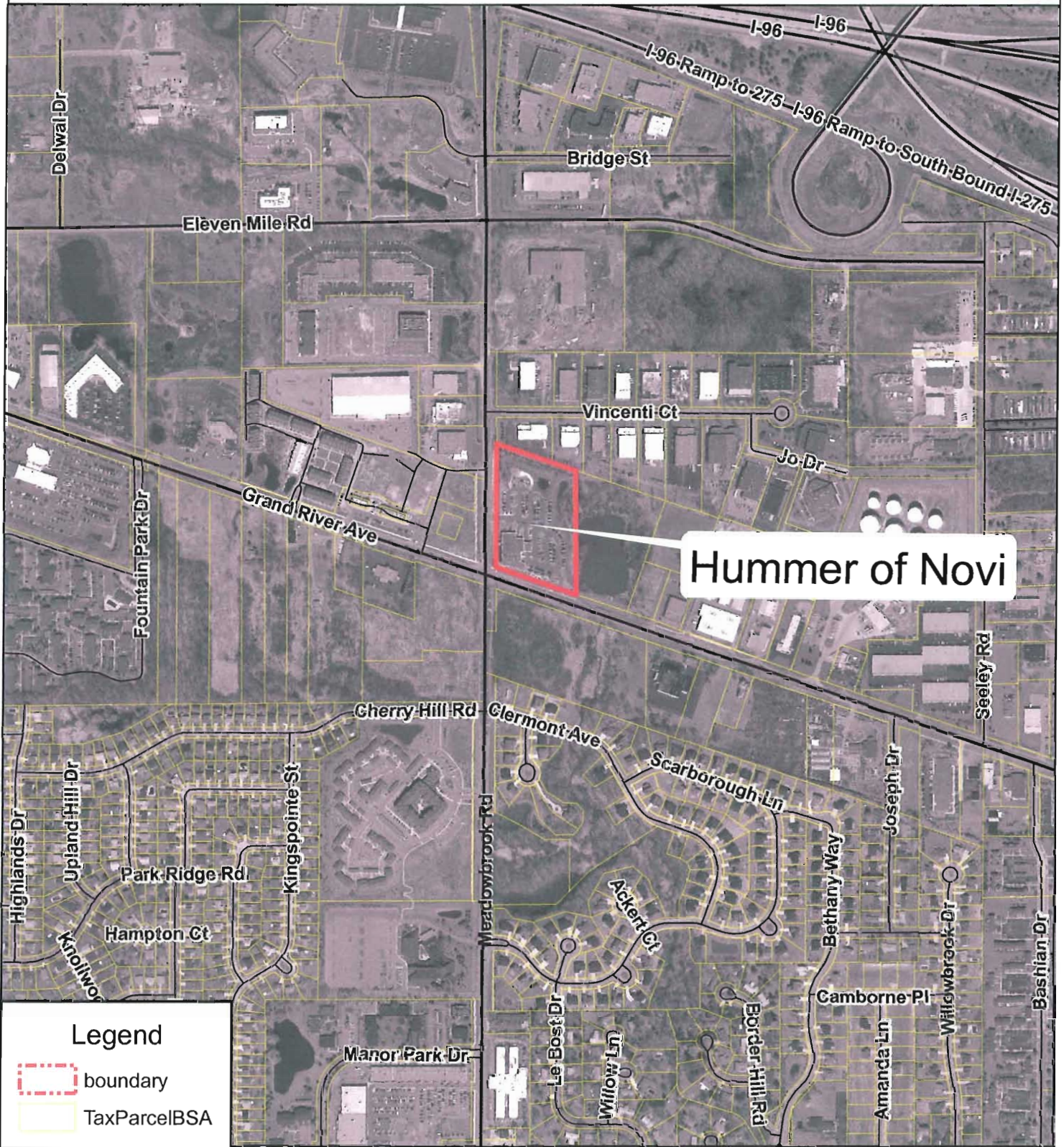
	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				



Hummer of Novi

Hummer of Novi

Location Map



Hummer of Novi

Legend

- boundary
- TaxParcelBSA



CITY OF NOVI PLAN REVIEW CENTER

Created by Mark Spencer
 6/27/07
 NOVI PLANNING DEPARTMENT
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-0475
 WWW.CITYOFNOVI.ORG



/hummerlocation.mxd

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

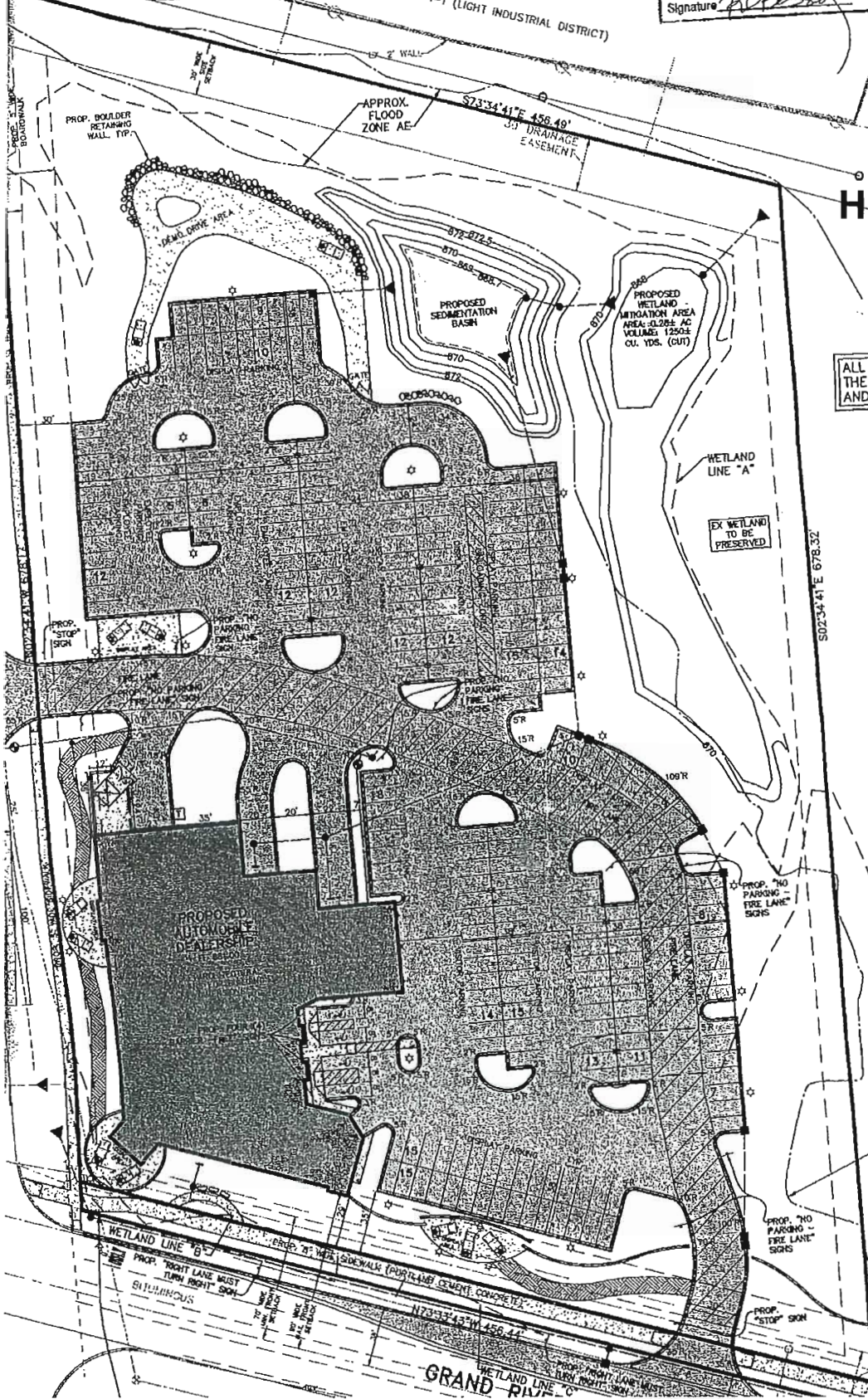
SITE PLAN No.
 BY:
 CONDITIONS SUBJECT TO DEVELOPER'S
AGREEMENT COMMITMENTS

Final 1/5/89 approved
 Conditions
 Date 11/2/04 Plan No. 04-09
 Signature

BUTLUMINOUS
 ZONED: I-1 (LIGHT INDUSTRIAL DISTRICT)

Hummer of Novi Site Plan

ALL WORK SHALL COMPLY WITH THE CITY OF NOVI STANDARDS AND SPECIFICATIONS



▲
north

ZONED: I-1 (LIGHT INDUSTRIAL DISTRICT)

CITY OF NOVI
REGIONAL DETENTION BASIN

A PERMIT TO OBTAIN PRIOR TO DISTURBING THE

APPROXIMATE FLOOD ZONE

A PERMIT TO OBTAIN PRIOR TO DISTURBING THE

May 10, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secrestwardle.com

Matthew C. Quinn, Esq.
Cooper, Shifman, Gabe, Quinn & Seymour
1026 West Eleven Mile Road
Royal Oak, MI 48067

Via Fax (248) 399-1711

RE: *Hummer of Novi*
Our File No. 55142 NOV

Dear Mr. Quinn:

This letter follows up our recent conversation. The issue of parking non-Hummer vehicles on the pads in front of the Hummer dealership (usually along the Grand River frontage) has resurfaced. By virtue of the attached letter from our office dated October 5, 2006, you and your client have been made aware of the City's position that the Special Development Option Agreement (SDO agreement) between Hummer of Novi and the City specifies that the use of the property is to be for new and used Hummer vehicles *only*.

Following that most recent letter, there was a period of compliance by Hummer, but we did discuss the idea of your coming before the City Council to at least request an appropriate amendment to the SDO agreement to that would allow the use of certain areas of the property for parking non-Hummer vehicles. Your request was that, to avoid extensive back-and-forth, our office prepare a proposed amendment for Council's consideration should it be interested in taking the issue up.

I have prepared a draft Second Amendment to the SDO allowing the sale of non-Hummer vehicles on the property, but not the display of non-Hummer vehicles on any of the pads adjacent to either Grand River or Meadowbrook. Such a revision would seem to address both the City's expectation that the dealership in fact be a Hummer dealership in more than just name and your client's business reality of occasionally accepting other vehicles in "trade" for a new Hummer. I do not know whether the City Council is interested in making this or any other change to the SDO.

Please let me know your thoughts on this suggested language as soon as possible. I expect that Council will want to address this matter in a formal way by its June 4, 2007 meeting.

Matthew C. Quinn, Esq.

May 10, 2007

Page 2

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,

Thomas R. Schultz

TRS/jes

cc: Clay Pearson, City Manager
Maryanne Cornelius, City Clerk
Cindy Uglow, Neighborhood Services
Barb McBeth, Planning Director

C:\NrPortbl\manage\SEEFEL\868687_1.DOC

City-Drafted

[POSSIBLE AMENDMENT DRAFTED BY CITY]

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

SECOND AMENDMENT TO SDO AGREEMENT

HUMMER OF NOVI GATEWAY

AGREEMENT, dated June ____, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the “**City**”) and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the “**Owner**”); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the “**Developer**”).

RECITALS:

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the “Original SDO Agreement”) in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a “Hummer” auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. A First Amendment to the SDO Agreement relating to signage was approved by the City Council on March ____, 2006.
- III. The Original SDO Agreement states in Article I, “General Project Description,” that “The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles.” Article III of the Agreement, entitled “Uses Permitted,” states that “Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto,

with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

- IV. The Agreement attached and incorporated a Conceptual Plan that states “The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- V. Owner has requested approval from the City to sell used cars, taken in trade for new Hummer vehicles at the Novi Hummer dealership, from the property.
- VI. The City Council having agreed to allow such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval through this Second Amendment to SDO, relating only to the sale—and not the display of such non-Hummer used vehicles on the “pads” along the road frontages of Grand River Avenue and Meadowbrook Road. No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Owner shall be permitted to park and store used non-Hummer vehicles taken in trade for the sale of Hummer vehicles on the premises in the parking lot areas designated on the conceptual; Plan and the Site Plan for parking and storage. Owner shall not, however, be permitted to park or store any non-Hummer vehicles on the “pads” depicted on the Plans along the road frontages of Grand River Avenue and Meadowbrook Road.
- 2. This Second Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles taken in trade for the sale of Hummer vehicles. In all other respects, the Original SDO Agreement shall remain unchanged.
- 3. This Second Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.
- 4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

OWNER:

GARDAN, LLC

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared _____, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

Notary Public

WITNESSES:

DEVELOPER:

HUMMER OF NOVI

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared _____, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

Notary Public

WITNESSES:

CITY OF NOVI

BY: David B. Landry, Mayor

BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

Notary Public

934200

Schultz, Thomas

From: Kim [kwolfe@CooperShifman.com] on behalf of Matthew Quinn [quinn@CooperShifman.com]
Sent: Friday, June 15, 2007 12:10 PM
To: Schultz, Thomas
Cc: grw10@aol.com
Subject: Hummer of Novi SDO Agreement
Attachments: Second Amendment to SDO Agreement.DOC

Tom:

Attached is my proposed revised Second Amendment to the SDO Agreement. This Agreement is set up on the basis that it is intended to "clarify" the site plan requirements instead of making the changes an adversarial process. I have also tried to use the terminology set forth in the Concept Plan and Final Site Plan within this Agreement. Please review and contact me for further discussion prior to placing this on the City Council Agenda.

Very truly yours,
Matthew C. Quinn
Cooper, Shifman, Gabe, Quinn & Seymour
1026 West Eleven Mile Road
Royal Oak, MI 48067
(248) 399-9703
(248) 399-1711 fax
quinn@coopershifman.com

Confidential: This electronic message and all contents contain information from the law firm of Cooper, Shifman, Gabe, Quinn & Seymour which may be privileged, confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately at (248) 399-9703 and destroy the original message and all copies.

POSSIBLE AMENDMENT DRAFTED BY HUMMER

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

SECOND AMENDMENT TO SDO AGREEMENT

HUMMER OF NOVI GATEWAY

AGREEMENT, dated June 1st _____, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the “City”) and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the “Owner”); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the “Developer”).

RECITALS:

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the “Original SDO Agreement”) in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a “Hummer” auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. A First Amendment to the SDO Agreement relating to signage was approved by the City Council on March _____, 2006.
- III. The Original SDO Agreement states in Article I, “General Project Description,” that “The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles.” Article III of the Agreement, entitled “Uses Permitted,” states that “Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto,

with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

- IV. The Agreement attached and incorporated a Conceptual-Plan that states as the intended use: –“The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- V. Owner and Developer have requested approval clarification from the City on its ability to sell used cars, taken in trade for new Hummer vehicles at the Novi Hummer dealership vehicles, from the property.
- VI. The City Council having agreed to clarify ~~allow~~ such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval clarification through this Second Amendment to SDO, ~~relating only to the sale and not the display of such non-Hummer used vehicles on the “pads” along the road frontages of Grand River Avenue and Meadowbrook Road.~~ No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

~~It is hereby clarified that the Owner is allowed to park, display and store used non-Hummer vehicles on the premises in the display parking lot areas designated on the Conceptual Plan and the Final Site Plan. It is further clarified that the Owner is permitted to park and display non-Hummer vehicles on the display area “pads” depicted on the plans along the road frontages of Grand River Avenue and Meadowbrook Road, however, such used vehicles shall have a sticker price of not less than \$20,000, shall be permitted to park and store used non-Hummer vehicles taken in trade for the sale of Hummer vehicles on the premises in the parking lot areas designated on the conceptual Plan and the Site Plan for parking and storage. Owner shall not, however, be permitted to park or store any non-Hummer vehicles on the “pads” depicted on the Plans along the road frontages of Grand River Avenue and Meadowbrook Road.~~

- 1.
- 2. This Second Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles ~~taken in trade for the sale of Hummer vehicles.~~ In all other respects, the Original SDO Agreement shall remain unchanged.
- 3. This Second Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may

be recorded by either party with the office of the Oakland County Register of Deeds.

4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

OWNER:

GARDAN, LLC

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared _____, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

Notary Public

WITNESSES:

DEVELOPER:

HUMMER OF NOVI

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared _____, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

Notary Public

WITNESSES:

CITY OF NOVI

BY: David B. Landry, Mayor

BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

Notary Public

934200

October 5, 2006

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secrestwardle.com

Matthew C. Quinn, Esq.
Cooper, Shifman, Gabe, Quinn & Seymour
1026 West Eleven Mile Road
Royal Oak, MI 48067

Via Fax (248) 399-1711

RE: ***Hummer of Novi***
Our File No. 55142 NOV

Dear Mr. Quinn:

Our office recently received a copy of your letter of September 27, 2006 to Cindy Uglow. Aside from the tone of the letter—not your usual courteous, businesslike manner—it is unclear to me exactly what the basis is for your contention that the Special Development Option Agreement (SDO agreement) between Hummer of Novi and the City does not specify that the use of the property is to be for new and used Hummer vehicles.

You make some incomplete references to language in the SDO agreement governing the use of the property as being only generally for “new and used car salesroom, etc.” and the “sale of new or used vehicles.” While I assume the point is that these phrases do not use the word “Hummer,” the SDO agreement—which is the agreement that governs this issue, not the initial “Development Agreement”—specifically states in the very first paragraph, Article I, “General Project Description,” that “The project entails the development of an automobile dealership facility that supports *the sale and servicing of General Motors Hummer’s franchise vehicles.*”

In addition, the “Uses Permitted” section of the agreement, Article III, specifically states that “Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto, *with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan*, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

Both the Conceptual Plan and the final Site Plan have clear and unequivocal notations on them that state that “The proposed development will be an automotive dealership selling and servicing new and used ***Hummer brand models.***” Contrary to your contention that these notations are irrelevant, notations on such plans are generally reviewed in intimate detail by both the developer and

Matthew C. Quinn, Esq.
October 5, 2006
Page 2

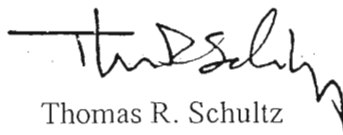
the City, and are indeed relevant; rarely would a detail as significant as the intended use of the property escape scrutiny over such a long approval process.

As a separate matter, your letter addresses the reference in Ms. Uglow's correspondence to the zoning ordinance as a basis for a possible City enforcement action in this case. You suggest that the City's only means of redress for a violation would actually be the circuit court, referring to Article XIV, General Provisions, Subsection D. While I agree that that section certainly does permit the City to enforce the provisions of the agreement in the circuit court, it does not provide that such would be the City's *only* means of enforcement.

Your letter closes with a suggestion that, if the matter is not simply "dropped" altogether, your client should be placed on a City Council agenda for discussion of an appropriate amendment to the SDO agreement to address your client's recent desire to use areas of the property for parking non-Hummer vehicles, should the City Council determine that to be appropriate. I will discuss that possibility with the City Manager and respond to you with regard to your client's options in that event, unless Mr. Pearson does so to you directly.

If you have any questions regarding the above, please do not hesitate to call.

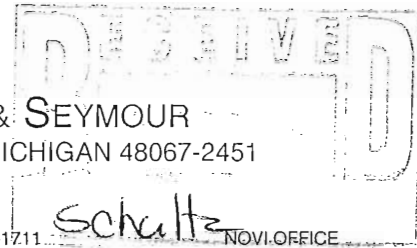
Very truly yours,



Thomas R. Schultz

TRS/jes
cc: Clay Pearson, City Manager
Maryanne Cornelius, City Clerk
Cindy Uglow, Neighborhood Services
Barb McBeth, Planning Director

LAW OFFICES
COOPER, SHIFMAN, GABE, QUINN & SEYMOUR
1026 WEST ELEVEN MILE ROAD -- ROYAL OAK -- MICHIGAN 48067-2451



CHARLES Y. COOPER
ARNOLD J. SHIFMAN
CHARLES H. GABE
MATTHEW C. QUINN
PHILIP H. SEYMOUR
KELLI A. ELDRED
SCOTT R. BAKER

TELEPHONE (248) 399-9703 -- FACSIMILE (248) 399-1711

EMAIL: quinn@coopershifman.com

NOVI OFFICE
26200 TOWN CENTER DRIVE
SUITE 145
P.O. BOX 352
NOVI, MICHIGAN 48375-0352
TELEPHONE (248) 349-8050

September 27, 2006

Cindy Uglow
Neighborhood Services
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375-3024

RE: Hummer of Novi

Dear Cindy:

Thank you for your letter directed to Scott Riddle regarding the Hummer of Novi automobile dealership dated September 15, 2006. I want you to know that I have known you for many years and I have the utmost respect for your ability to do your job. I also know that you were given direction by someone in the Administration to issue the Notice of Violation letter. Unfortunately, someone is wasting your time as well as the City's money by directing you to issue such a letter.

This entire issue is almost laughable. The Hummer of Novi site is governed by two contractual agreements. The first contract was a Development Agreement entered into between Hummer of Novi, Inc. and the City of Novi in December of 2003. I will point out to you that nowhere in the contents of the Development Agreement nor in the Special Development Option Agreement is there any reference whatsoever to anything other than "new and used vehicles".

In the Development Agreement, Recitations, paragraph II specifically states "for purposes of improving and using the Land for retail business use for service and parts and accessory sales of and for new and used vehicles and with outdoor space for exclusive sale of new or used vehicles..." Also, Recitations, paragraph IV (A) states "owner shall develop and use the Land solely for new and used car salesroom, showroom, offices and for service and parts of accessory sales and with outdoor space for exclusive sale of new or used vehicles..." A signed copy of the Development Agreement is attached.

Page two

The next written contract which governs this property is the Special Development Option Agreement entered into between the City of Novi and Gardan LLC, who was the owner of the property, and Hummer of Novi, as the Developer. Once again, in paragraph I, General Project Description, sub-paragraph 4 states "Owner agrees to develop and use the Property solely for new and used car salesroom, showroom and offices and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as permitted under this Agreement..." Within the same Agreement, paragraph III, Uses Permitted states "uses permitted within the Project shall consist of new and used car salesroom, showroom and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan..." Further, under paragraph XIV, General Provisions, subparagraph E. states "this Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement..." This Agreement was signed in August of 2004. At the time of drafting this letter I do not have available to me a signed copy of the Agreement but I have attached hereto an unsigned copy.

I would also like to point out that assuming for a moment that there was some violation of the Agreement, paragraph XIV. General Provisions. (D) states "A material breach of this Agreement by Owner shall constitute a nuisance per se. In the event of a breach of this Agreement, by Owner, its agents, officers, employees or persons acting in concert with it, the City may notify Owner of the occurrence of the breach and issue a written notice requiring the breach be cured within 30 days."

Now, given the background of this issue which is based upon the written Agreements, it is hard to believe that the City of Novi is stating that on the Final Site Plan, which is merely an engineering plan which sets forth the parking requirements, lot area, road frontage requirements, off street loading area requirements and fire department notes and other engineering notes, and that a non-ordinance required note on the Plan controls. The City would like to forget the two written Agreements and the multiple inches of review letters from the City of Novi Planning Department and the Applications for the rezoning. That note was merely an oversight from some draft person at Alpine Engineering and never was intended to supersede hours of attorney time, Planning Commission time, Council time and client time in coming up with the specific language of the Development Agreement and the Special Development Option Agreement. To even think so is ludicrous!

As referenced previously, the Special Development Option requires that a claim for nuisance per se be litigated in the Oakland County Circuit Court for a determination. Such a litigation would be an entire waste of time and money by the City of Novi because the undersigned does not believe that any Judge on the Oakland County Circuit Court Bench would ever determine that the written language contained in two separate Contracts are in any way overruled by a non-required superfluous note on a Site Plan.

Page three

However, if the City is intending to pursue this matter, the undersigned and my client demand that this issue be placed on the agenda for the City Council so that all members of Council, the media and the public can understand how ridiculous this entire matter is.

I would ask that you respond in writing to me and advise if this matter is being dropped at this time or of the City Council meeting agenda date at which we are expected to appear.

Very truly yours,

COOPER, SHIFMAN, GABE,
QUINN & SEYMOUR

A handwritten signature in black ink, appearing to read 'MCQ', with a long horizontal line extending to the right.

Matthew C. Quinn

MCQ/kw

Enc.

cc: Clay Pearson – City Manager
Barbara McBeth – Planning Director
Tom Schultz – City Attorney ✓
Scott Riddle
Gary Wood – Hummer of Novi
David Landry – Mayor

DEVELOPMENT AGREEMENT

(Hummer of Novi)

AGREEMENT, by and between Hummer of Novi, Inc., a Michigan corporation, whose address is 28100 Telegraph Road, Southfield, Michigan 48034, developer, under a contract to purchase the land described below from Grand River/Meadowbrook Properties, LLC, a Michigan limited liability company, 31800 Northwestern Highway, Suite 204, Farmington Hills, Michigan 48334 (together referred to as "Owner"), and the City of Novi, 45175 West Ten Mile Road, Novi, Michigan 48375-3024 ("City").

RECITATIONS:

- I. It is represented to the City by the Owner that the Owner owns all interest in the "Land" described on the attached and incorporated Property Description Exhibit "A".
- II. For purposes of improving and using the Land for retail business use for service and parts and accessory sales of and for new and used vehicles and with outdoor space for exclusive sale of new or used vehicles, Owner has petitioned for an amendment of the Zoning Ordinance, as amended, so as to reclassify the Land from I-1, light industrial, to B-3, general business. The I-1 classification under the Zoning Ordinance, shall be referred to in this Agreement as the "Existing Classification" and the B-3 classification under the Zoning Ordinance shall be referred in this Agreement as "Proposed Classification".
- III. The Proposed Classification would provide the Owner with certain material development options not available under the Existing Classification, and would be a distinct and material benefit and advantage to the Owner.
- IV. In proposing the Proposed Classification to the City, Owner has expressed as a firm and unalterable intent and commitment that Owner will develop and use the Land in conformance with the following undertakings by Owner, as well as the following forbearances by the Owner (each and every one of such undertakings and forbearances shall together be referred to as the "Undertakings"):
 - A. Owner shall develop and use the Land solely for a new and used car salesroom, showroom, offices and for service and parts and accessory sales and with outdoor space for exclusive sale of new or used vehicles as permitted under the proposed classification subject to and in accordance with all of the specifications in subparagraphs A through H of this paragraph IV.

APPROVED
DEVELOPMENT AGREEMENT

- B. Owner shall forebear from developing and/or using the Land in any manner other than as approved as part of the Proposed Classification and the Undertakings, with the understanding that, to the extent the Undertakings are more restrictive than City regulations, the Undertakings shall supercede any and all inconsistent City regulations. For purposes of this provision, the determination with regard to whether one or more undertakings are more restrictive than City regulations, shall be made by the City Council in its sole discretion.
- C. Owner shall develop the Land in accordance with all applicable laws and regulations, and with all applicable ordinances, consistent with this Agreement, and consistent with the Undertakings, and, the right to develop shall be subject to and in accordance with all applications, reviews, approvals, permits and authorizations required under applicable laws, ordinances and regulations, and the Undertakings.
- D. Owner shall seek, obtain approval for, and use best management practices and efforts with respect to all wetland, storm water and soil erosion requirements and measures throughout the Land during the design and construction phases, and subsequent use of the Land and development contemplated in the Proposed Classification and Specifications, as set forth above. In conjunction with the approval of the final site plan, a conservation easement shall be executed and delivered to the City for recording, providing for the preservation of the wetlands and woodlands as reflected on the approved site plan.
- E. The Land shall be improved as a new and used car salesroom, showroom, office with outdoor space for exclusive sale of new or used vehicles, and, notwithstanding the reference to certain plans, below, the Owner shall be obligated to seek and obtain all approvals (including preliminary and final site plan, to be reviewed and approved as a Special Development Option (SDO) under the requirements of Article 9A. GE, Gateway East District, of the City of Novi Zoning Ordinance, as amended) and secure all permits, pay all fees and comply with all ordinances and regulations of the City, subject to the express terms of this Agreement. In view of the fact that the City's approval of the proposed classification has been based upon the voluntary representation from the Owner that it desires to develop the project as a Special Development Option (SDO) under the requirements of Article 9A. GE, Gateway East District, of the City of Novi Zoning Ordinance, as amended, but, as a result of contractual time deadlines, for the sole benefit of the Owner, who would otherwise be prohibited from following the

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specific procedures required by the GE Zoning Ordinance requirements, the City has agreed to proceed by way of this Development Agreement, based upon the Owner's agreement and promise that, as an Undertaking herein, Owner shall, without delay, submit all materials and pay all fees, and proceed subject to the reasonable discretion and conditions of the City to attempt to secure approval of the SDO on the Land, with the understanding that the final site plan for the SDO shall, if approved by the City, be in conformance with the provisions of this Agreement. Such site plan shall be reviewed by the City, pursuant to all applicable requirements and procedures of the GE District Ordinance.

(1) The Land shall be developed in conformity with the following aspects of the conceptual site plan attached as Exhibit B:

- ◆ Minimum set backs from road rights-of-way, with the understanding that Owner shall dedicate to the City the rights-of-way on Grand River and Meadowbrook Road as depicted on the City of Novi Master Plan;
- ◆ The location of the ~~three~~ ⁴ small vehicle display pods adjacent to the road rights-of-way as shown on Exhibit B, and Owner agrees not to propose or use other outdoor vehicle display and/or storage to a greater extent and/or with closer or greater exposure to Grand River and Meadowbrook Road than shown on Exhibit B, and all such other outdoor vehicle display and/or storage shall be subject to site plan review and approval, and, there shall be no elevated storage or display of vehicles in any location on the Land;
- ◆ The approximate location of the building, which may have up to 23,500 square feet of gross building area, subject to compliance with all set back and site improvement/preservation requirements; and,
- ◆ Notwithstanding what is depicted on Exhibit B, the three foot wall shall be continued behind the three small vehicle display pods shown on Exhibit B adjacent to the road rights-of-way, and shall be continuous along Grand River, but shall not be required in front of the entrance to the building at the intersection; on Meadowbrook Road, the wall shall extend from the building to the driveway shown on the plan, including behind the pod area. Landscaping in

front of and/or behind such wall shall be as determined during site plan review.

Exhibit B contains more information than the matters referenced above; however, this Agreement is limited to the matters expressly stated above. By way of example (only), this Agreement does not extend or apply to drainage, wetlands, woodlands, engineering issues, traffic issues, all other planning issues, and all other aspects of a site plan not expressly specified above as being included in this Agreement.

- (2) The minimum landscaping requirements for the Land shall be as provided in the landscaping provisions of the Zoning Ordinance, but shall include all landscaping depicted on the attached Exhibit C. At the time of site plan approval, and in the discretion of the City, additional landscaping designed to minimize the visual effect of the parking storage and display areas may be required.
 - (3) The minimum facade, building material requirements and elevations for the building proposed for the Land shall be as set forth on attached Exhibit D. In the event of an ambiguity, the City Council shall determine whether an alternative proposal fails to meet the "minimum" requirements under this provision.
- F. The Owner agrees that on or before December 31, 2003 Owner shall apply for a re-zoning of the subject property to GE District, and, if and upon the City's approval of such Zoning Map Amendment, the Owner shall immediately thereafter prepare and file with the City all materials and fees required for the proposed Special Development Option (SDO) for the GE District as set forth in Section 904 A. of the Novi Zoning Ordinance, all in conformity with this Agreement and the Undertakings.
- G. If the City approves the rezoning to the Proposed Classification, Owner shall be permitted without delay to submit a proposed preliminary site plan. Preliminary and final site plan review and approval, as required under the GE District of the City of Novi Zoning Ordinance, as amended, for an SDO (including process and procedure) shall then be required for the Land, provided, such approval and the development of the Land shall be in conformity with this Agreement.

- H. Vehicles and vehicle spaces shall be permitted on the Land for storage and/or display, employee parking, and for customer parking, and the total number of vehicles for such purposes shall be determined in the discretion of the City Council as part of site plan review, with the understanding that Owner has represented that the number of spaces shall be considerably less than provided in customary dealerships and less than permitted in the ordinance. No other vehicle spaces shall be permitted on the Land.
- I. The Demonstration Drive area at the northern end of the site shall not be accessible from off site. Parking shall not be permitted in such area. The road material, accessibility limitations, layout, and landscaping requirements of the Demonstration Drive area shall be determined by the City at the time of site plan approval.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Upon the Proposed Classification becoming final following entry into this Agreement:
 - (A) The Undertakings shall be carried out by Owner on and for the Land;
 - (B) Owner shall act in conformance with the Undertakings; and
 - (C) The Owner shall forbear from acting in a manner inconsistent with the Undertakings.
2. In the event Owner attempts to or proceeds with actions to complete improvement of the Land in a manner other than a new and use car salesroom, showroom, offices with outdoor space for exclusive sale of new or used vehicles in strict conformity with the Undertakings, the City shall be authorized to revoke all outstanding permits, including building permits, if any, issued for improvements on the Land, and the City shall be authorized to withhold the issuance of certificates of occupancy requested on the Land, until such time as assurances reasonably deemed adequate by the City are made that the development contemplated by this Agreement is being carried out and constructed in accordance with the terms of this Agreement, including each and every one of the undertakings.
3. Owners have not presented an issue as to whether the Land could be developed under the current Existing Classification with or without the Undertakings. It is acknowledged and agreed that the City has not required the Undertakings. The Undertakings have been voluntarily offered by Owner in order to provide an enhanced use and value of the

Land, and to protect the public safety and welfare, and, to induce the City to rezone the Land to the Proposed Classification so as to provide material advantages and development options for the Owner.

4. All of the Undertakings represent actions, improvements and/or forbearances that are directly beneficial to the Land. The burden of the Undertakings on the Owner is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to the Land as a result of the requirements represented in the Undertakings.
5. In addition to the provisions in paragraph number two, above, in the event the Owner, or its respective successors, assigns and/or transferees proceed with a proposal for, or other pursuit of, development of the Land in a manner which is in material violation of the Undertakings, 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 applicable to the Land, to amend the Master Plan and zoning classification of the Land to a reasonable classification determined appropriate by the City, and in such event neither the Owner nor its respective successors, assigns and/or transferees, shall have any vested rights in the Proposed Classification and/or use of the Land as permitted under the Proposed Classification, and Owner shall be estopped from objecting to the rezoning and reclassification to such reasonable classifications 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 Land; provided, this provision shall not preclude Owner from otherwise challenging the reasonableness of such rezoning as applied to the Land.
6. By execution of this Agreement, Owner acknowledges that it has acted in consideration of the expectation that the City will approve the Proposed Classification on the Land, and Owner agrees to be bound by the provisions of this Agreement if and immediately when the City determines, in its discretion, to approve the Proposed Classification. The action of the City in entering into this Development Agreement is based upon the understanding that the intent and spirit of the police power objectives of the City relative to the Land are embodied in the development with the Undertakings, and would be assured based upon the Undertakings, and the City is thus achieving its police power objectives and has not, by this Agreement, bargained away or otherwise compromised any of its police power objectives.
7. After consulting with an attorney, the Owner understands and agrees that this Agreement is authorized by and consistent with all applicable state and federal law and Constitutions, that the terms of this Agreement

DEVELOPMENT AGREEMENT
EXHIBIT A

Parcel Description

A part of the NW 1/4 of Section 24; T 1 N, R 8 E, City of Novi, Oakland County, Michigan, being more particularly described as follows:

Beginning at a point located S 02° 34' 41" E. 721.49 feet along the west line of Section 24 (nominal centerline of Meadowbrook Road) and N. 87° 43' 33" E. 60.00 feet and S. 02° 34' 41" E. 517.70 feet along the easterly right-of-way line of Meadowbrook Road (120 feet wide) from the NW corner of Section 24; thence S. 73° 34' 41" E. 456.49 feet; thence S. 02° 34' 41" E. 678.32 feet; thence N. 73° 33' 43" W. 456.53 feet along the northerly right-of-way line of Grand River Avenue; thence N. 02° 34' 41" W. 678.18 feet along the easterly right-of-way line of Meadowbrook Road to the point of beginning. Containing 6.721 acres and being subject to all easements of record.

Parcel Identification No. 50-22-24-100-051

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DEVELOPMENT AGREEMENT
EXHIBIT B

Concept Site Plan

Vehicle Display Areas –	Grand River Ave.	1100 SF
	Meadowbrook Rd.	800 SF
	Front of Building (Corner)	800 SF

Please see attached.

DEVELOPMENT AGREEMENT
EXHIBIT C

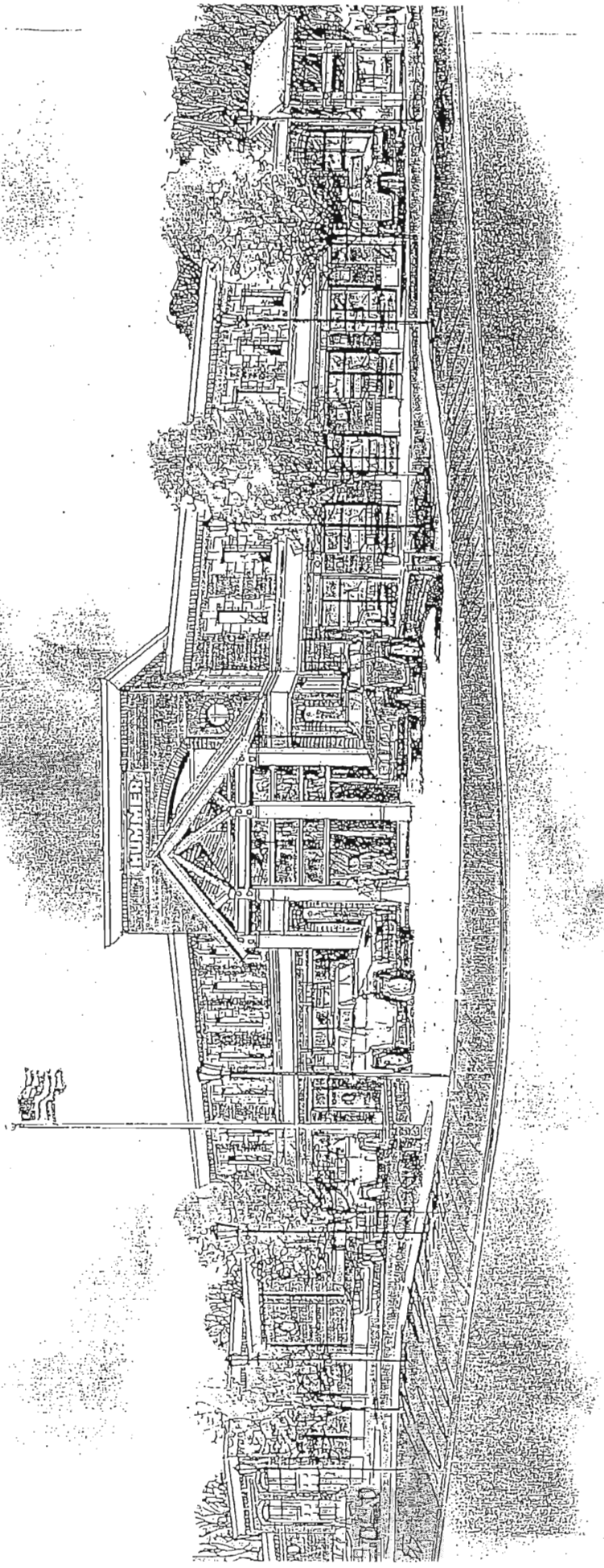
Concept Landscape Plan

Please see attached.

DEVELOPMENT AGREEMENT
EXHIBIT D

Conceptual Facade Elevations

Please see attached.



STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

AGREEMENT

HUMMER OF NOVI GATEWAY

SPECIAL DEVELOPMENT OPTION (SDO)

AGREEMENT, dated August __, 2004, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the "City") and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the "Owner"); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the "Developer").

RECITALS:

- A. Owner is the owner of (or has the right to acquire) a parcel of real property (the "Property") within the City proposed for development as an automobile dealership to be known as "Hummer of Novi" (generally referred to hereafter as the "Project"). The legal description of the Property is attached as Exhibit A. The property is owned by Gardan, LLC, who is for purposes of this Agreement the successor to Hummer of Novi under the Development Agreement between Hummer of Novi and the City of Novi dated December 15, 2003. Hummer of Novi will develop the property and operate the dealership. For purposes of the remainder of this Agreement, "Owner" shall mean both Gardan, LLC and Hummer of Novi.
- B. Owner is pursuing approval of the Project as a Gateway East District Special Development Option ("SDO") pursuant to Article 9A of the City of Novi Zoning Ordinance (the "Zoning Ordinance"). Conceptual Approval of Owner's SDO Plan has been granted pursuant to Article 9A, Section 904G, subject to certain terms and conditions, by the Novi City Council.

- C. Following Conceptual Approval of an SDO Plan, Article 9A, Section 904G contemplates the preparation of an Agreement setting forth the conditions upon which the approval has been granted, which in turn serves as the basis for Site Plan approval, and thereafter the development, use, and maintenance of the Project. City Council approval of the **Agreement** is required, and following that City Council review and approval of the Site Plan is required.
- D. Set forth below are the terms and conditions of the **Agreement** for the Project, which is to be recorded with the Register of Deeds for the County of Oakland following execution by the parties.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

I. GENERAL PROJECT DESCRIPTION

The Hummer of Novi Project is to be located at the northeast corner of Grand River Avenue and Meadowbrook Road. The site is 6.72-acres and is currently zoned Gateway East District. The project entails the development of an automobile dealership facility that supports the sale and servicing of General Motor's Hummer franchise vehicles. The building is planned to be 23,177 square feet in size with no more than 249 parking spaces shielded from Grand River and Meadowbrook. The architecture and design layout are to meet the exterior material requirements of the Gateway East District ordinance. Particular attention has been given to the requirements of both the Gateway East District regulations and the requirements of the prior Development Agreement between the City and Hummer of Novi, dated December 15, 2003.

The site has some wetlands, including Bishop Creek and a 100-year floodplain running through the northerly end of the site and continuing along the eastern property line. The site has no woodlands, natural habitats, or historic trees. The land was previously a fill area, as indicated by soil boring test results.

Owner intends to and shall seek, obtain approval for, and use best management practices and efforts with respect to, all wetland, storm water and soil erosion requirements and measures throughout the Property during the design and construction phases, and subsequent use of the Property and development contemplated in the Conceptual Plan. In conjunction with the approval of the Site Plan, a conservation easement shall be executed and delivered to the City for recording, providing for the preservation of the wetlands and woodlands as reflected on the approved Site Plan.

Owner agrees to develop and use the Property solely for a new and used car salesroom, showroom, and offices and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as permitted under the Agreement, subject to and in accordance with all of the specifications in the Conceptual Plan and approved Site Plan. Owner will forebear from developing and/or using the Property in any manner other than as approved as part of the Conceptual Plan and approved Site Plan, with the understanding that, to



the extent the requirements therein are more restrictive than City regulations, they supersede any and all inconsistent City regulations.

II. EFFECT OF SDO AGREEMENT

- A. This Agreement shall consist of the text of and exhibits to this document, including the “**Conceptual Plan**” attached and incorporated as **Exhibit B** (full-sized original of the Plan on file in the City Clerk’s office) and is intended to serve as the contract contemplated under Article 904G of the Zoning Ordinance. This Agreement establishes the fundamental terms and provisions of subsequent building reviews and approvals, and all construction, use, and maintenance of the Project. The other relevant and incorporated SDO documents include City of Novi City Code, including the Zoning Ordinance, and all conditions appended to the Site Plan approval by the City Council.
- B. Approval of this Agreement, together with the attached and incorporated Conceptual Plan (and any conditions thereon) entitles Owner to seek appropriate permits and approvals for construction of the Project in accordance with all applicable provisions of the Zoning Ordinance, as amended, and any and all other applicable laws, ordinances, and regulations.
- C. This Agreement is binding upon and benefits the City and Owner, as well as their respective successors, assigns, and transferees, and shall run with the land.
- D. Physical development of the Project shall be in accordance with the attached and incorporated Conceptual Plan and the Site Plan to be approved by the City Council, together with any conditions thereon.
- E. The City may require Owner to provide reasonable performance and financial guarantees for the completion of improvements, including without limitation, right-of-way improvements, water mains, sanitary sewers, storm drains, and landscaping activities. Such financial guarantees may include cash deposits, letters of credit, or surety bonds. Owner acknowledges the need for such performance and financial guarantees given the prominent location of the project and its impact upon the City’s Gateway East District.
- F. The attached Exhibit B contains more information than the matters referenced above; however, this Agreement is limited to the matters expressly addressed herein. By way of example only, this Agreement does not extend or apply to approvals for drainage, wetlands, woodlands, and engineering issues, traffic issues or all other aspects of a Site Plan review, some or all of which shall occur at later in the approval process.
- G. The City has approved the Conceptual Plan for this Development on the basis that it meets the following criteria in Section 904C.1.b of the ordinance:

- 1) The proposed use exemplifies the intent of the GE District, as stated in Section 900, and the intent of the SDO as stated in Section 904A.
- 2) The proposed use incorporates as a predominant physical component of the development that provides a unique entry feature along Grand River for the GE District, characterized by a distinct, high profile appearance.
- 3) The proposed use is compatible with, and will promote, the uses permitted with the GE District and SDO.
- 4) The proposed use will not create an inconsistency with the City's Master Plan for Land Use in terms of the general activities on the site and the impacts upon the surrounding area.
- 5) The proposed use is designed in a manner that will result in traffic and pedestrian safety, consistent with the adjoining pedestrian and vehicular thoroughfares.
- 6) The proposed use is designed with exceptional aesthetic quality, including building design, building materials and landscaping design, not likely to be achieved except base upon this authorization.

These findings are made in reliance upon development in compliance with the Conceptual Plan.

III. USES PERMITTED

Uses permitted within the Project shall consist of a new and used car salesroom, showroom, and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan. X

The improvements shall be designed and constructed in accordance with the regulations in the Zoning Ordinance, as amended, for the Gateway East District. The parties agree and acknowledge that the proposed use is authorized under Article 9A of the Zoning Ordinance, as amended. No deviations from the requirements of that Article shall be permitted unless depicted on the Conceptual Plan or set forth in this Agreement. All development and use shall be in accordance with this Agreement, and all applicable laws, regulations, and ordinances not inconsistent with this Agreement.

IV. BUILDING LOCATION/PARKING

The area, location, and setbacks of the building, which may have up to 23,500 square feet of gross building area, shall be substantially as shown on the Conceptual Plan attached as **Exhibit B**. Minimum set backs from road rights-of-way shall be as shown on the Conceptual Plan, with

the understanding that Owner has offered to, and shall, dedicate to the City the rights-of-way on Grand River and Meadowbrook Road as depicted on the City of Novi Master Plan. All set back, site improvement, and preservation requirements shall be finally determined at the time of Site Plan approval.

V. LANDSCAPING AND SCREENING

The minimum landscaping requirements for the Property shall be as provided in the landscaping provisions of the Zoning Ordinance, but shall include as a minimum all landscaping depicted on the attached **Exhibit C**. At the time of site plan approval, and at the discretion of the City, additional landscaping designed to minimize the visual effect of the parking storage and display areas may be required.

Notwithstanding anything depicted on **Exhibit B**, a three foot wall and/or screening equivalent landscaping shall be continued behind the vehicle display pod adjacent to Grand River, and shall be continuous along the Grand River right-of-way on both sides of the driveway access. The exact location of the wall and landscaping in front of and/or behind such wall shall be as determined during site plan review.

VI. PARKING AND VEHICLE STORAGE

Four small vehicle display pods are permitted as shown on **Exhibit B** adjacent to the road rights-of-way as shown on **Exhibit B**. Owner agrees not to propose or use other outdoor vehicle display and/or storage to a greater extent and/or with closer or greater exposure to Grand River and Meadowbrook Road than that shown on **Exhibit B**, and all such other outdoor vehicle display and/or storage shall be subject to Site Plan review and approval. There shall be no elevated storage or display of vehicles in any location on the Property.

Vehicles and vehicle spaces shall be permitted on the Property for storage and/or display, employee parking, and for customer parking. The total number of vehicles for such purposes shall be determined in the discretion of the City Council as part of Site Plan review, with the understanding that Owner has represented that the number of spaces shall be considerably less than provided in customary dealerships and less than permitted in the ordinance. No other vehicle spaces shall be permitted on the Property.

The “demonstration drive” area at the northern end of the site shall not be accessible from off site. Parking shall not be permitted in such area. The road material, accessibility limitations, layout, and landscaping requirements of the demonstration drive area shall be determined by the City at the time of site plan approval.

VII. OPEN SPACE

A minimum 25 percent of the gross area of the property shall be provided as open space pursuant to the terms and requirements of Section 903A.8.

VIII. BEST MANAGEMENT PRACTICES/CONSERVATION EASEMENT

Owner shall seek, obtain approval for, and use best management practices and efforts with respect to, all wetland, storm water and soil erosion requirements and measures throughout the Property during the design and construction phases, and subsequent use of the Property and development contemplated herein. In conjunction with the approval of the Site Plan, a conservation easement shall be executed and delivered to the City for recording, providing for the preservation of the wetlands and woodlands as determined by Council and reflected on the approved Site Plan.

IX. ON-SITE AND OFF-SITE IMPROVEMENTS

Certain on-site and off-site infrastructure improvements shall be required for the Project, including improvements for storm water management, sanitary sewer, and public water, and the Owner shall be solely responsible for all costs and expenses of and associated with such improvements. There shall be no obligation on the part of the City to construct, and the City has made no guarantees, assurances, or representations that it will construct, any such improvements, nor has the City made any guarantee, assurance, or representation with regard to the viability of such improvements.

X. STORM WATER MANAGEMENT

Storm water shall be released from the Project in a manner to be approved by the City as part of final engineering plan review. It is acknowledged that, in order to control the rate, quantity, and quality of a storm water outlet from the Property, on-site storm water facilities to be constructed by the Owner may be required. In general, the storm water collection, pre-treatment, storage, and transportation facilities shall be included as part of the final engineering plan approved for the Project. The Project shall be constructed to achieve a storm water management system by which the Owner, and the successors of the Owner, and shall assure that the quality and the quantity of storm water shall be in accordance with all applicable ordinances, regulations, and laws.

Any storm water basins and facilities serving the Property shall be designed and constructed by the Owner, and subject to approvals and inspection by the City, in accordance with all applicable City, County of Oakland, and State of Michigan ordinances, codes, regulations, and laws. The drainage conveyance facilities, which shall constitute a part of the overall storm water management system on the Property, shall conform with all applicable City, County of Oakland, and State of Michigan ordinances, codes, regulations, and laws.

XI. WATER AND SANITARY SEWER

Sanitary sewer and water are available to the Property. Owner shall, at its sole expense, construct and install improvements and/or connections tying into the municipal water and sewage systems. Such improvements shall be designed and constructed in accordance with the Site Plan and all applicable City, State and County standards, codes, regulations, ordinances and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions, and easements to reach the area to be served, shall be provided by and at the sole expense of Owner, and shall be completed, approved, and dedicated to (as required by the City in its discretion) the City to the extent necessary to fully service all proposed and existing facilities, structures, and uses within the Development to be served thereby, prior to issuance of any building permits for the building in of the Development.

XII. MECHANISM FOR PRESERVATION, REGULATION, MAINTENANCE AND FINANCE OF OPEN SPACE AND LANDSCAPED AREAS

As part of final engineering plan review and approval, Owner shall submit to the City proposed covenants and restrictions to be recorded for The Project (together referred to as “**Covenants and Restrictions**”). The Covenants and Restrictions shall be subject to review and approval by the City Attorney as part of final engineering approval, and shall be included in or made a part of appropriate documentation (e.g., easements) as determined by the City in its discretion.

As part of such Covenants and Restrictions, there shall be provisions obligating Owner and all future successor owners to maintain, repair, and preserve all open areas, including landscaping, signage, drives, detention and drainage facilities, and any other open elements and improvements in and for the Project. Such maintenance, repair, and preservation shall be to a high standard of care.

The Covenants and Restrictions shall additionally provide that, in the event Owner or successor owners of the Property shall at any time fail to carry out one or more responsibilities or obligations relative to maintenance, repair and/or preservation, the City shall have the right to serve written notice upon Owner or successor owners, setting forth the deficiencies in maintenance, repair, and/or preservation. The notice may also set forth a demand that such deficiencies be cured within a stated reasonable period of time, and further state a date, time, and place of hearing before the City Council, for the purpose of allowing Owner or successor owners to be heard as to why the City should not proceed with the maintenance, repairs, and/or preservation which had not been undertaken.

At the hearing, the City may take action to extend the time for curing deficiencies, and the date of the hearing may itself be extended and/or continued to a date certain. If, following the hearing, the City shall determine that the maintenance, repairs, and/or preservation have not been completed within the time specified in the notice, as such time may have been extended by the City, the City shall thereupon have the power and authority, but not the obligation, to enter upon the Property, and perform such maintenance, repairs, and/or preservation as found by the City to

be appropriate. The cost and expense of making and financing such maintenance, repairs, and/or preservation, including the cost of all notices and hearings, including reasonable attorney's fees, plus a reasonable administrative fee, shall be paid by the Owner or successor owners, and such amounts shall constitute a lien on all taxable portions of the Property. The City may require the payment of such monies prior to the commencement of any work.

If such costs and expenses have not been paid within thirty (30) days of a billing to Owner or successor owners, all unpaid amounts may be placed on the delinquent tax roll of the City as regards the taxable portions of the Property, and shall accrue interest and penalties, and shall be collected in the manner made and provided for the collection of delinquent real property taxes in the City. In the discretion of the City, such costs and expenses may also be collected by suit initiated against Owner and/or successor owners, and in such event, Owner or the successor owners, as the case may be, shall pay all Court costs and reasonable attorney fees incurred by the City in connection with such suit if the City obtains relief in such action.

Any failure or delay by the City to enforce any provision of the Covenant and Restrictions shall in no event be deemed or construed, or otherwise relied upon, as a waiver or estoppel of the right to eventually pursue and insist upon strict enforcement.

In all instances in which the City is authorized to pursue maintenance, repairs and/or preservation, as provided above, the City, and its agents and contractors, shall be permitted, and are hereby granted authority, to enter upon all portions of the Property reasonably necessary or appropriate for the purpose of inspecting and/or completing the respective work.

XIII. ARCHITECTURE/FACADE

The minimum facade, building material requirements, and architectural elevations for the building proposed for the Property shall be as set forth on attached **Exhibit D**. In the event of an ambiguity, the City Council shall determine whether an alternative proposal fails to meet the "minimum" requirements under this provision.

XIV. GENERAL PROVISIONS

A. The terms of this Agreement represent the product of negotiations between Owner and the City, and shall be interpreted as a jointly-drafted agreement.

B. Except as specifically modified by this Agreement, the Code and Regulations of the City shall apply to the Property. Any substantial violation of the City Code by Owner with respect to the Property shall be deemed a breach of this Agreement.

C. The Zoning Board of Appeals (ZBA) shall have no jurisdiction over the Property or the application of this Agreement.

D. A material breach of this Agreement by Owner shall constitute a nuisance *per se*. In the event of a breach of this Agreement by Owner, its agents, officers, employees, or persons acting in concert with it, the City may notify Owner of the occurrence of the breach and issue a written notice requiring the breach be cured within thirty (30) days; provided, however, that if the breach, by its nature, cannot be cured within thirty (30) days, Owner shall not be in breach hereunder if Owner commences the cure within the thirty (30) day period and diligently pursues the cure to completion. Failure to comply with such notice shall render Owner liable to the City in any suit for enforcement for actual costs incurred by the City including, but not limited to, attorneys' fees, expert witness fees and the like.



E. This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement. In the event Owner desires to propose an amendment, an application shall be made to the City Planning Department, who shall process the application in the same manner called for in the Zoning Ordinance for an original application, with any required public hearings, and notification of the public to follow then-existing City procedures.

F. It is understood and agreed by the parties that if any part, term, or provision of this Agreement is finally held by the courts to be illegal or in conflict with any law of the State of Michigan or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid; provided, however, that if the provision, part, or term invalidated is so fundamental to the entire Agreement that the purpose of the Agreement is frustrated, the Agreement is voidable at the option of either party.

G. 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.

H. 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.

I. The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represents that the execution of this Agreement has been duly authorized and is binding on such party.

J. This Agreement shall run with the land and bind the parties, their heirs, successors, and assigns. This Agreement shall be recorded in the Oakland County Records by the City and a recorded copy thereof shall be delivered to Developer forthwith. It is understood that the Property is subject to changes in ownership and/or control at any time, but that successors shall take their interest subject to the terms of this Agreement.

K. It is understood that the members of the City Council and/or the City Administration and/or its departments may change, but the City shall nonetheless remain bound by this Agreement.

L. It is agreed that the final terms, conditions, requirements, and obligations of this Agreement represent the mutual understanding and agreement of the parties, and Owner fully accepts and agrees to the terms, conditions, requirements, and obligations contained herein, and shall not be permitted in the future to claim that their effect results in an unreasonable limitation upon the use of all or any portion of the Property, or to claim that enforcement of the terms and provisions of this Agreement cause an inverse condemnation, due process violation, or taking of all or any portion of the Property. Moreover, it is agreed that the improvements and undertakings described in this Agreement are necessary and roughly proportionate to the burdens created by the Development, and are necessary in order to ensure that public services and facilities necessary for and affected by the Project will be capable of accommodating the Development on the Property and the increased service and facility loads caused by the Project; to protect the natural environment and conserve natural resources; to ensure compatibility with adjacent uses of land; to promote the use of the Property in a socially, environmentally, and economically desirable manner; and to achieve legitimate objectives authorized under the City and Village Zoning Enabling Act, MCL 125.581, *et seq.*

It is further agreed and acknowledged that all improvements required to be constructed and/or financed by Owner, both on-site and off-site, are clearly and substantially related to the burdens to be created by the Development and/or use of the Property, and all such improvements without exception are clearly and substantially related to the City's legitimate interest in protecting the public health, and general welfare, and are roughly proportionate to such burdens created by the Development. It is further agreed that all fees to be imposed, as contemplated in this Agreement, do not constitute "taxes."

WITNESSES:

OWNER:

GARDAN, LLC

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ____ day of _____, 2004, before me appeared _____, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

Notary Public

WITNESSES:

DEVELOPER:

HUMMER OF NOVI

BY:
ITS:

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ____ day of _____, 2004, before me appeared _____, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

Notary Public

WITNESSES:

CITY OF NOVI

BY: Louis Csordas, Mayor

BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2004, before me appeared Louis Csordas and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

Notary Public

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APPLICANT:

SCOTT A. RIDDLE, INCORPORATED
4160 VALLEY FORGE ROAD
BLOOMFIELD HILLS, MI 48301
PHONE (248) 202-4518
FAX (248) 538-7877

CIVIL ENGINEER:

ALPINE ENGINEERING, INC
46892 WEST RD., SUITE 109
NOVI, MI 48377
PHONE (248) 926-3701
FAX (248) 926-3765

ARCHITECT:

HARRY RIDDLE ARCHITECT
221 PARKVIEW DR.
BLOOMINGTON, IL 61701
PHONE (309) 662-3651
FAX (309) 662-1858

LANDSCAPE:

ALLEN DESIGN
557 CARPENTER
NORTHVILLE, MI 48167
PHONE (248) 462-4668
FAX (248) 349-0559

PARKING REQUIREMENTS:

SALES AREA (USABLE) = 4634 SF
SERVICE BAYS = 14 EA

VISITOR SPACES REQUIRED:

SALES AREA 4634/200 = 23 SPACES
SERVICE BAYS = 14 SPACES
VISITOR SPACES REQUIRED=37 SPACES

VISITOR SPACES PROVIDED= 41 SPACES
BARRIER FREE SPACES = 4 SPACES

EMPLOYEE PARKING:

ANTICIPATED EMPLOYEES = 45
EMPLOYEE PARKING PROVIDED = 47 SPACES

DISPLAY PARKING=

151 SPACES
TOTAL PARKING SPACES = 239 SPACES

LOT AREA/OPEN SPACE:

LOT AREA 292,723 SF
OPEN SPACE 138,374 SF (47% OPEN SPACE)

FRONTAGE:

MEADOWBROOK: 678.17'
GRAND RIVER: 456.44'

INTENDED USE:

THE PROPOSED DEVELOPMENT WILL BE AN
AUTOMOTIVE DEALERSHIP SELLING AND
SERVICING NEW AND USED HUMMER BRAND
MODELS. THIS DEVELOPMENT WILL BE
CONSTRUCTED IN ONE PHASE. INTENDED
COMPLETION DATE: SPRING 2005

OFF-STREET LOADING AREA:

BUILDING FRONTAGE= 120 LF
LOADING AREA REQUIRED = 10 SF / FRONT FOOT
TOTAL LOADING AREA REQUIRED = 1200 SF
TOTAL LOADING AREA PROVIDED = 1200 SF

FIRE DEPARTMENT NOTES:

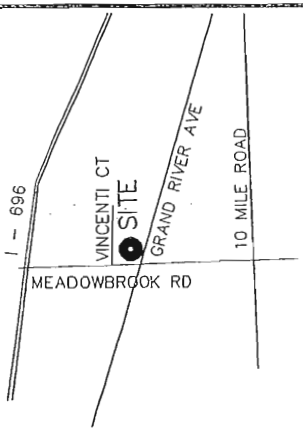
1) ALL WATER MAINS AND FIRE HYDRANTS ARE TO
BE INSTALLED AND BE IN SERVICE PRIOR TO
CONSTRUCTION ABOVE THE FOUNDATION.

2) THE BUILDING ADDRESS IS TO BE POSTED FACING
THE STREET THROUGHOUT CONSTRUCTION. THE
ADDRESS IS TO BE AT LEAST 3 INCHES HIGH ON A

COMMERCIAL
SITE PLANNING

SURVEYING

RESIDENTIAL



LOCATION MAP
NOT TO SCALE

SITE DATA:

CURRENT ZONING= GATEWAY
REQUIRED SETBACKS- 70'-90' THOROUGHFARE
THOROUGHFARE 70' - 90'
SIDE 0'
REAR 30'

TOTAL BUILDING AREA 23,117 SF
TOTAL ON SITE PAVED AREA 112,494 SF

NOTES:

- 1) THE 10-YR STORMWATER DETENTION VOLUME IS ACCOMMODATED ON SITE. THE 100-YR STORMWATER DETENTION IS PROVIDED IN THE CITY OF NOVI REGIONAL DETENTION BASIN. DESIGN CRITERIA FOR STORM WATER RUNOFF AREA DISCHARGE = 0.15 CFS/AC.
- 2) ROOFTOP EQUIPMENT MUST BE SCREENED PER ORDINANCE REQUIREMENTS
- 3) EXTERIOR LIGHTING MUST COMPLY WITH SECTION 2511 OF THE CITY OF NOVI CODE.
- 4) RIGHT OF WAY PERMIT IS REQUIRED FROM THE CITY OF NOVI FOR ANY WORK IN THE GRAND RIVER DRIVE AND MEADOWBROOK RIGHT-OF-WAYS.
- 5) ALL SIGNS SHALL CONFORM TO ALL APPLICABLE CODES AND ORDINANCES (CHAPTER 28) OF THE CITY OF NOVI, AND WHERE REQUIRED SHALL BE RENEWED AND APPROVED BY THE DEPARTMENT OF BUILDING AND SAFETY AND A PERMIT ISSUED.
- 6) ALL PARKING AND TRAFFIC CONTROL SIGNS SHALL COMPLY WITH THE DESIGN AND PLACEMENT REQUIREMENTS OF THE "MICHIGAN MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES" (MMUTCD).
- 7) NOTIFY THE CITY OF NOVI A MINIMUM OF 48 HOURS PRIOR TO THE START OF CONSTRUCTION.

ALL CONSTRUCTION MUST BE CONFORMING TO THE