CITY OF NOVI CITY COUNCIL DECEMBER 16, 2019



SUBJECT: Consideration to approve a Fourth Amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive.

SUBMITTING DEPARTMENT: Community Development, Planning

BACKGROUND INFORMATION: City Council is being asked to approve a Fourth Amendment to the above-referenced agreement. The purpose of the amendment is to extend the date by roughly 8 months, from its current date of no more than four (4) months after the "Conditions to Closing" must be satisfied (December 21, 2019) to August 31, 2020.

The original agreement was entered into back on June 21, 2018, and had an outside date of 18 months after the effective date to satisfy all Conditions to Closing, including full Planned Rezoning Overlay (PRO) approval. There were a number of internal "target" dates for inspections and developmental approvals within that end date. These included dates for submission of development plans for the purchaser to seek approval of a brownfield redevelopment plan, and for the Purchaser to secure a commercial rehabilitation district.

City Council initially considered the proposed Fourth Amendment at its November 25, 2019 meeting. The matter was tabled. City Council comments reflected a general desire to understand more about where the proposed Sakura Way project stands, both in terms of what has been done by the Purchaser to date in furtherance of the project and what still remains to be done.

A brief timeline up to the current date:

- Original Agreement entered into effective June 21, 2018.
- Purchaser begins conducting due diligence/inspections—environmental and general suitability inquiry, among others.
- The parties agree to amend the Purchase Agreement on November 28, 2018, to reduce the purchase price and remove references to the neighboring Town Center parcel.
- Second Amendment to the Agreement entered into effective December 17, 2018, extending the inspection period, but not extending the dates for securing approvals and closing on the property.

- On February 27, 2019, the City and Purchaser hold an initial concept meeting in preparation for submission fo PRO application.
- Third Amendment to Agreement entered into April, 2019, adding reference to Commercial Rehabilitation District, confirming that the inspection period is done, and changing the new rezoning district to TC-1.
- On April 23, 2019, Purchaser submits draft PRO plans and materials for a preapplication conference.
- Staff review comments are provided to the Purchaser on May 8, 2019.
- On July 1, 2019, applicant formally submits PRO Concept Plan.
- City staff and Purchaser meet to discuss potential City review comments on July 25, 2019.
- Staff and consultant written comments formally sent to Purchaser on July 29, 2019.
- On October 3, 2019, Purchaser submits revised PRO concept plan.
- Written staff and consultant review comments submitted to Purchaser on November 4, 2019.
- Purchaser submits revised PRO Concept Plan to the Master Plan and Zoning (MPZ) Committee on November 13, 2019.
- City schedules Planning Commission public hearing for December 11, 2019.

Planning Commission held its initial public hearing to review the project on December 11, 2019. The Commission postponed the matter to next month's meeting. A copy of the PRO Concept Plan as presented and some of the renderings are attached for the convenience of City Council's review.

Timeline from current date forward:

If the City Council determines to extend the Purchase Agreement by agreeing to the Fourth Amendment to Purchase Agreement, a significant amount of work still needs to be done. The Purchaser has put together a timeline, attached hereto, describing what it believes is still to be accomplished. Note that the timeline is Purchaser's, not the City's. It is not binding on the City, and may or may not reflect the actual dates any of the listed activities can or will occur. It is a planning tool only. The Purchaser is now requesting an extension of time to August 31, 2020 to complete all submissions and approvals, with an additional 30 days thereafter to close on the property.

Note that the Agreement also provides that the current good faith deposit of \$25,000 immediately becomes non-refundable, such that even if the transaction fails to close, and Purchaser would otherwise be entitled to release of the funds, by virtue of this amendment the City will be entitled to retain the \$25,000. A new/second \$25,000 deposit will be posted. It would become nonrefundable after/in the event of PRO approval.

The Purchaser's brownfield plan must be submitted by January 31, 2020.

Finally, the proposed Amendment clarifies the existing requirement that the PRO Agreement will run with the land, rather than terminate after two years as provided by ordinance. Language to that effect can be required in the conveyance deed, shall run with the land, and shall survive the closing.

RECOMMENDED ACTION: Approve a Fourth Amendment to the previously-approved Conditional Agreement of Purchase and Sale on North Grand River City Property, located north of Grand River Avenue, east of Town Center Drive, and to authorize the Mayor and Clerk to sign the same, subject to final review and approval of the terms and conditions of the Purchase Agreement by the City Manager and City Attorney's office, including minor amendments thereto.

FOURTH AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE <u>NORTH GRAND RIVER CITY PROPERTY</u>

THIS FOURTH AMENDMENT TO CONDITIONAL AGREEMENT OF PURCHASE AND SALE ("**Amendment**") is made as of December _____, 2019 by and between the CITY OF NOVI, a Michigan municipal corporation ("**Seller**"), and SAKURA NOVI, LLC, a Michigan limited liability company ("**Purchaser**"), with regard to the following:

A. Seller and Purchaser entered into a certain Conditional Agreement of Purchase and Sale North Grand River City Property dated June 21, 2018 for the purchase and sale of the Anglin Parcel as defined and described in the such agreement, as amended by that certain First Amendment dated November 2, 2018, that certain Second Amendment dated December 17, 2018, and that certain Third Amendment dated April _____, 2019 (as amended, the "**Agreement**").

B. The Inspection Period for Purchaser to inspect the Property has expired.

C. Purchaser has timely submitted its Planned Rezoning Overlay (PRO) application for the development of the Property; however, it is apparent that additional time is needed in order to satisfy all the Conditions to Closing as set forth in the Agreement.

D. The parties desire to amend the Agreement to extend certain dates in the Agreement to enable Purchaser to obtain its approvals, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties amend the Agreement as follows:

1. Notwithstanding anything in the Agreement to the contrary, including without limitation the provisions in Paragraphs 3, 4, 5, 6, 7, and 9 referring to a potential refund on the Deposit, the \$25,000 Deposit previously deposited in escrow by Purchaser on June 25, 2018 shall immediately become nonrefundable to the Purchaser, but shall remain applicable to the Purchase Price. The parties will, upon execution of this Amendment, direct the Escrow Agent to release the Deposit amount to the Seller forthwith. In no event, including the failure of the transactions contemplated by the Agreement, whether the fault of the Purchaser or Seller, shall the Deposit amount be returned to Purchaser.

2. Within five (5) business days after the date of this Amendment, Purchaser shall deliver a second deposit in the amount of Twenty-Five Thousand and 00/100 Dollars

(\$25,000.00) to the Title Company ("**Second Deposit**"). The Second Deposit shall be held by the Title Company in strict accordance with this Agreement. The Second Deposit shall be refundable to Purchaser, unless and until Purchaser obtains PRO Approval pursuant to Section 7(a) and the City has completed all actions required by the City to create the District and approve the Exemption Certificate(s) pursuant to Section 7(b), at which time the Second Deposit shall immediately become nonrefundable to Purchaser and the parties will direct the Escrow Agent to release the Second Deposit to Seller. The Second Deposit shall be applied to the Purchase Price at Closing.

3. Section 1(b) of the Agreement is hereby deleted and replaced with the following:

(b) "Closing Date": September 30, 2020. In the event all Conditions to Closing as set forth in Paragraph 6 and the Development Approval Conditions set forth in Paragraph 7(a) and 7(b) are not satisfied or waived by August 31, 2020, in Purchaser's sole and absolute discretion, then this Agreement shall automatically terminate, and this Agreement shall thereafter be of no further force or effect and all liability and obligations under this Agreement shall be terminated, unless the Seller and Purchaser stipulate in writing to extend the Closing to a date certain, in which case the date specified in that written stipulation shall be the Closing Date.

4. The fourth and fifth paragraphs of Section 7(a) are amended to read as follows:

In the event the Parties comply in good faith with this provision, but the PRO is not approved by April 21, 2020, then at any time thereafter Purchaser may withdraw its PRO application and terminate this Agreement upon written notice to Seller and the Agreement shall be without further force and effect. Seller makes no representation in this Agreement that the PRO and PRO Agreement will be approved. Notwithstanding anything else in this Agreement, Seller retains all its right and discretion under applicable law and ordinances to approve, reject, or approve with conditions any proposed PRO and PRO Agreement, and this Agreement does not limit or waiver its zoning or police power authority in any way, including the relation of the proposed plans and improvements to adjacent properties and the existing and future or planned road rights-of-way. Seller's failure to approve the PRO Plan or the PRO Agreement shall not constitute a default or breach for the purposes of this Agreement.

For purposes of the foregoing, PRO Approval shall occur when the City Council approves the PRO Plan and a PRO Agreement that is mutually satisfactory to Purchaser and Seller. Notwithstanding anything in the City's Zoning Ordinance to the contrary, particularly Section 7.13, the PRO Agreement shall provide that the Property shall be developed in accordance with its provisions and the PRO Plan and Agreement, that the PRO Agreement shall be recorded at the Oakland County Register of Deeds and run with the land, unless and until modified by the City and the Purchaser (or its successors or assigns) and that the PRO Agreement and PRO Approval shall not expire within two (2) years as provided for by ordinance.

5. The Purchaser shall submit a complete Brownfield Plan in compliance with Michigan Public Act 318 of 1996 to the City of Novi no later than January 31, 2020.

6. The parties hereby confirm and ratify all provisions of the Agreement, which shall and do remain in full force and effect as amended hereby. This Amendment may be signed in counterparts, each of which will be deemed an original document, but all of which together will constitute one and the same document. Faxed and pdf scanned signatures shall be deemed original signatures for purposes of this Amendment. All capitalized, undefined terms in this Amendment shall have the same meaning as defined in the Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to Conditional Agreement of Purchase and Sale North Grand River City Property on the date first above written.

PURCHASER:

SAKURA NOVI, LLC, a Michigan limited liability company

By:___

Geoffrey Scott Aikens, Trustee of the Geoffrey Scott Aikens Trust u/a/d December 10, 2011

SELLER:

CITY OF NOVI, MICHIGAN, a Michigan municipal corporation

By:__

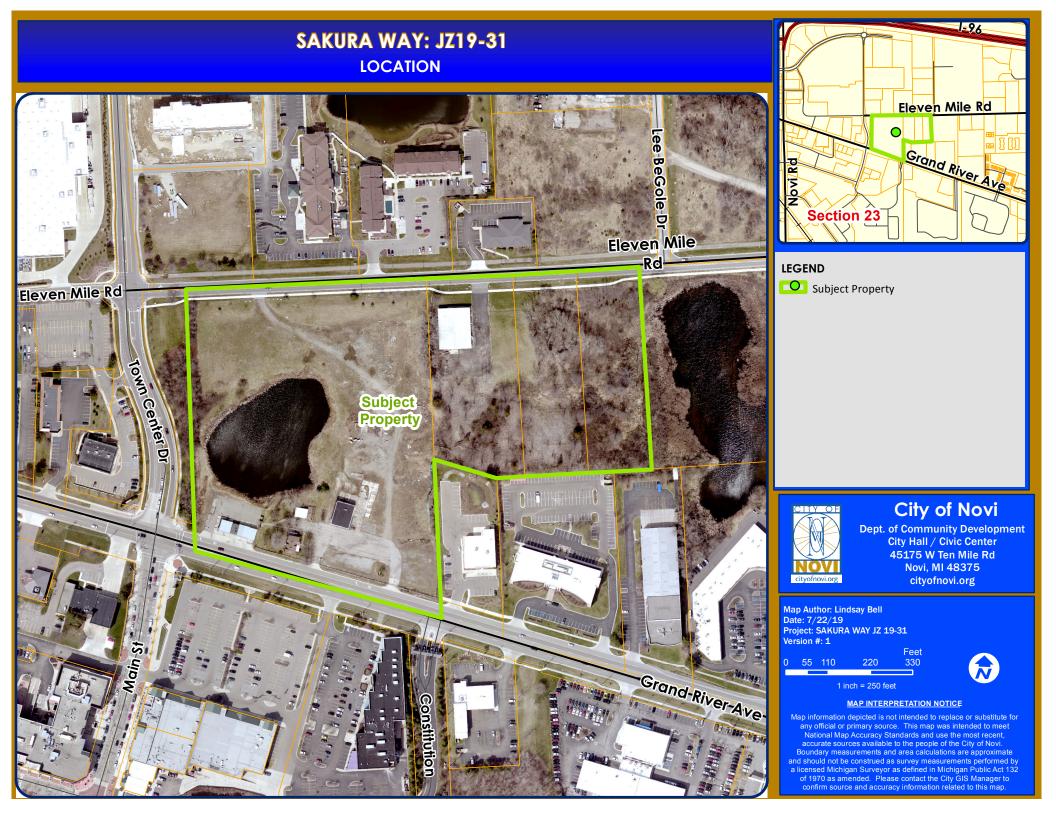
Robert J. Gatt, Mayor

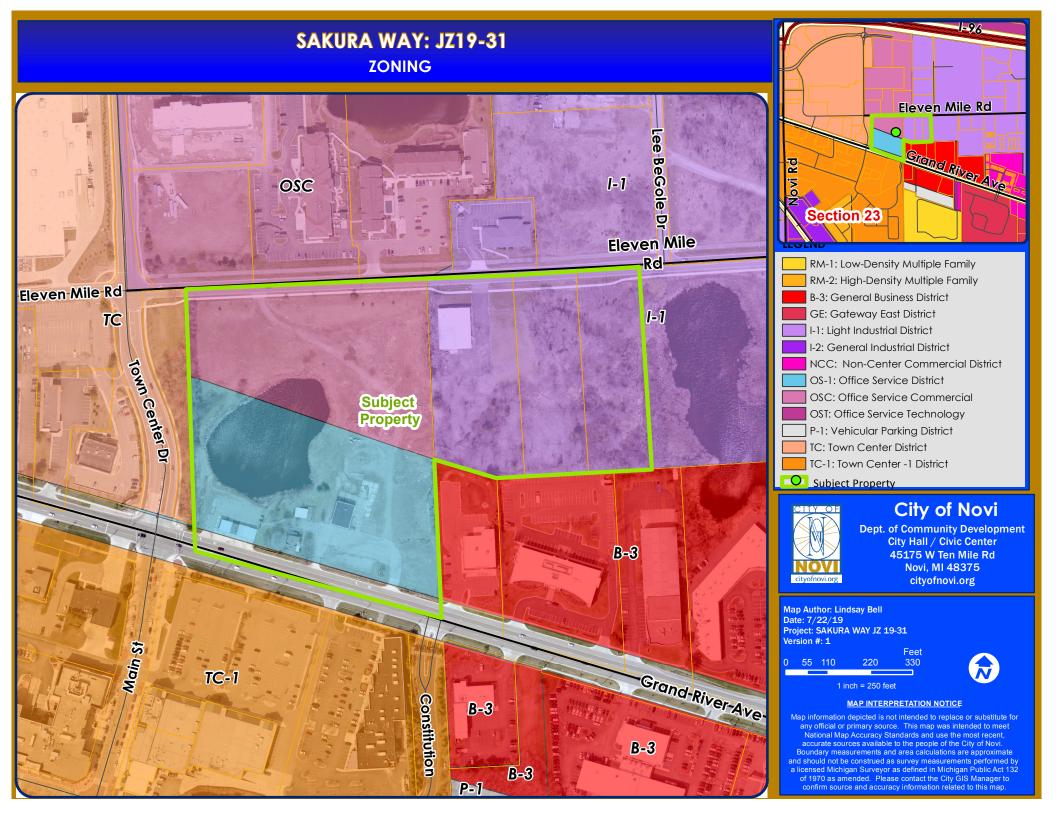
By:___

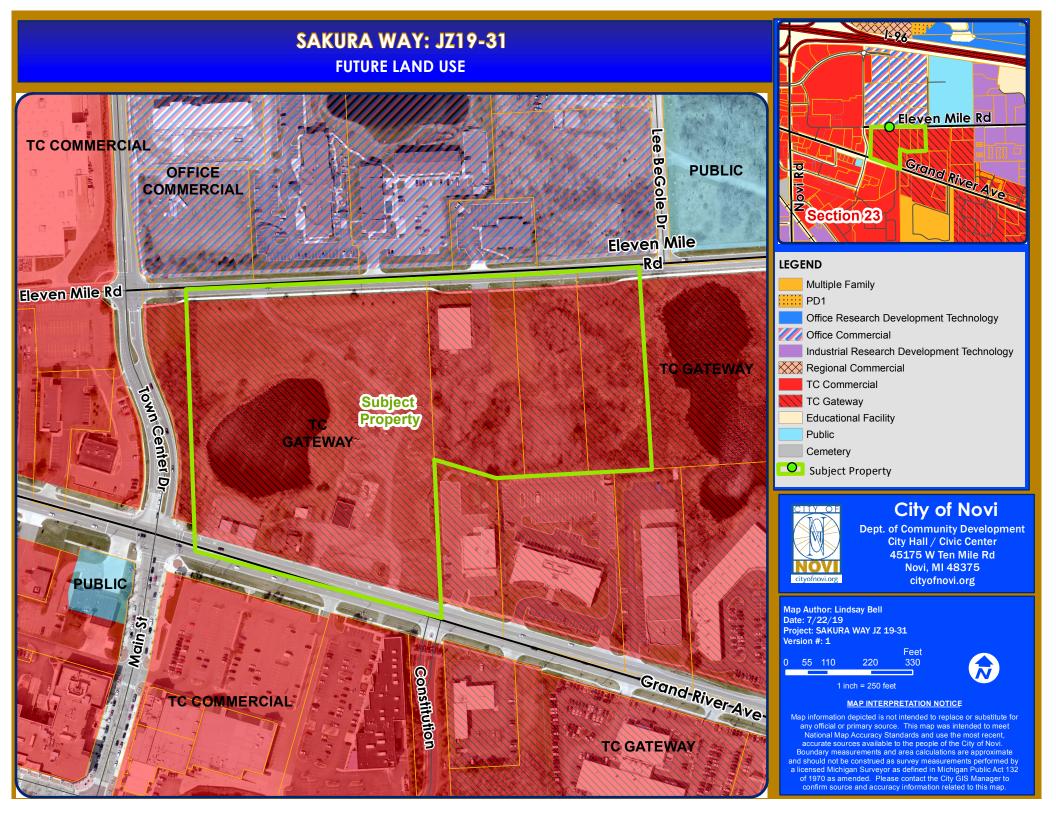
Courtney Hanson, City Clerk

EXHIBIT 1 (DRAFT)

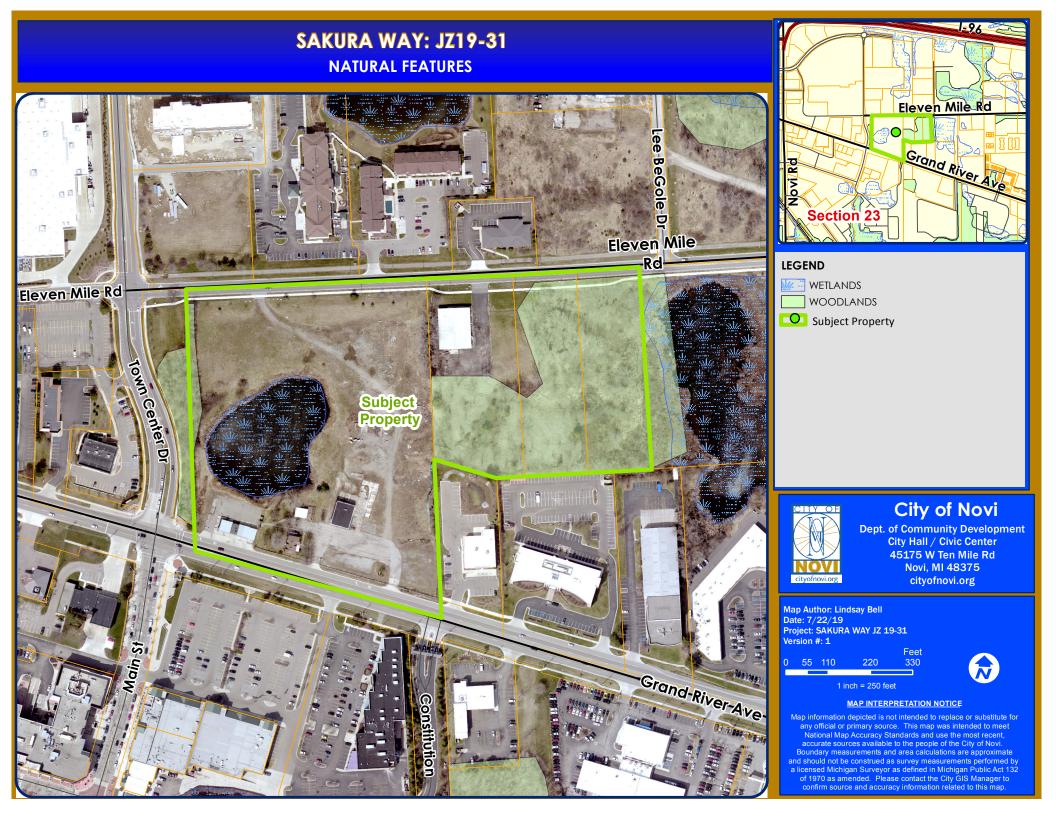
DATE	ACTIVITY
12/19 12/19 1/20 1/20 2/20 3/20	 <u>Planned Rezoning Overlay</u> Planning Commission Public Hearing Revised Concept Plan Submittal by PEA Revised Concept Plan Review by City of Novi Planning Commission Recommendation City Council – 1st PRO Reading City Council – 2nd PRO Reading & PRO Agr
1/20 2/20 2/20 4/20 4/20 6/20	 Brownfield Plan Brownfield Plan Submittal to City of Novi City Council Public Hearing on Brownfield Plan Brownfield Plan & Work Plan Submitted to Oakland County Oakland County Commission Public Hearing and Brownfield Plan Approval Brownfield Plan & Work Plan Submitted to MDEGLE MDEGLE Approval of Brownfield Plan & Work Plan
12/19 4/20 3/20 10/20	Wetlands • Resubmittal of Revised MDEGLE Wetland Permit Submittal by Atwell • Submittal of Wetland Permit to City • Wetland Permit Review and Approval by MDEGLE • Wetland Permit Review and Approval by City
1/20 3/20 3/20 6/20	 <u>Commercial Rehabilitation District</u> District Submittal to City City Council Public Hearing on Creation of CRD District & Sakura Abatement City forwards CRD District & Abatement Approval to State Tax Commission State Tax Commission Review and Approval of CRD District & Abatement
4/20 4/20 5/20 5/20 6/20 6-7/20 7-8/20 8/20 9/20 10/20	 Site Plan Approval Site Plan Submittal to City by PEA Site Plan Review by City Staff Applicant to Develop and Submit Response Planning Commission Meeting for Site Plan, Wetland Permit, Woodland Permit Approval Final Site Plan Submittal by PEA Final Site Plan Review by City Staff Final Site Plan Revisions by PEA Revised Final Site Plan Submittal by PEA Revised Final Site Plan Review by City Electronic and Final Stamping Set Approval by City
By 7/31/20 By 8/31/20 8/20	Other Activities Deadline for Conditions to be Satisfied Closing













PHASE 1 & 1B USES :

30,000 S.F. MARKET (25,000 S.F. + 3,500 S.F. MEZZ. OFFICE + 1,500 S.F. MEZZ. ADDITIONAL SEATING)

- 5 RESTAURANTS
- 4 RETAIL SPACES
- 68 TOWN-HOME APARTMENTS (55 1,184 S.F. & 13 1,541 S.F. UNITS) 121 PARKING SPACES

68 PHASE 1 UNITS / 12.75 AC. = 5.33 UNITS PER ACRE

. LIGHT INDUSTRIAL USE ECCO TOOL CO. PARCEL GRANDFATHERED IN

PHASE 2 & 2B BASELINE OPTION :

2 RESTAURANTS

- 50 TOWN-HOME RESIDENTIAL UNITS (34 1,184 S.F. & 16 1,541 S.F. UNITS) 92 PARKING SPACES
- 50 PHASE 2 UNITS + 68 PHASE 1B UNITS = 118 TOTAL UNITS / 15.5 AC. = 7.6 UNITS PER ACRE

TOTAL DEVELOPMENT SITE : ± 15.5 AC. PHASE 1 & 1B -----: 12.75 AC. PHASE 2 & 2B -----: 2.75 AC. RESIDENTIAL ----DISTRICT (PHASE 1B) : 4.50 AC. ECCO PARCEL : 0.90 AC. GRANDFATHER I-1 USE

PHASES 1 & 2 **BASELINE OPTION: PROJECT CALCULATIONS**

THASE I & IB - COMMERCIAL BUILDING AREA - 50,817 S.F. G.L.A. SO.977 S.F. G.B.A. PARKING PROVIDED = 330 SPACES

RESIDENTIAL DEVELOPMENT 55 DIE CAR GARAGE UNITS 13 TWO TWO CAR GARAGE UNITS (GA TOTAL UNITS, ALL BEING 2 BEDRICOM) PARKING PROVIDED = 68 + 40 VISITOR SPACES = 108 SPACES TOTAL PARKING PROVIDED - 458 SPACES PHASE 1 + 18

PARKING REQUIRED = 436 SPACES "AS RECOMMENDED BY PARKING STUDY DATED 6-27-19

PHASE 2 4 28 RESIDENTIAL DEVELOPMENT S4 ONE CAR GARAGE UNITS, 16 TWO CAR GARAGE UNITS (50 TOTAL UNITS, ALL BRIDG 2 REDROCM) PARKING PROVIDED = 66 + 26 VISITOR SPACES = 92 SPACES TOTAL PARKING PROVIDED PHASES 1 # 2 = 438 + 135 = 577 SPACES

PHASING EXHIBIT C : PHASE 1 + 2 BASELINE OPTION







WAH YEE ASSOCIATES ARCHITECTS & FLANNERS

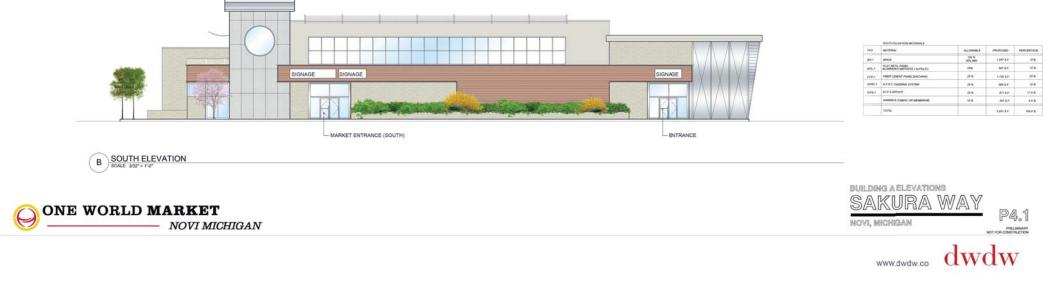
42400 GRAND RIVER AVENUE, SUITE 200 NOVI, MICHIGAN 48375 PHONE 24E489.9140 PROJECT NO. 5035

PRELIMINARY NOT FOR CONSTRUCTION P1+1 CAD DWG C. PHASE 1 - 2 IS LEXHIBIT 12 + 19 LANC

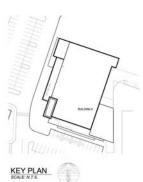
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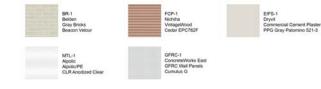
FUELIC HEARIN











173% 33% 15% 15% 25% 3%



TENANT SIGNAGE ARZA

E) F.S.MEO

WEST ELEVATION

(3) P4.3









KEY PLAN





350 N. Old Noodward Avenue, Suite 300 Birmingham, MI 48009 ptr. 248-283-1071



WAH YEE ASSOCIATES 42400 GRAND RIVER AVENUE, SUITE 200 NOVI, MICHIGAN 48375 PHONE 245.489.9160

PRELIMINARY PROFESSION

NOT FOR CONSTRUCTION

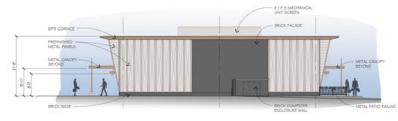
P4.3

CAD DWG 5035 COLOR P43 9-30-19.DWG



MATERIAL	ALLOWABLE	PROPOSED	PERCENTAGE
CAST STONE	25.%	0.5.F	0.0%
BRICK.	30 % MH.	344.5.7.	34.5%
075	25%	190 5.5.	12.5%
METAL CANOPIES & SUNSCREENS	15%	50 5 F.	3.2 %
PREFIRISHED WETAL PARELS (FLAT)	25%	764 5.5.	49.7 %
TOTAL		1.576 5.7.	100.0%

NOTE: 1 TOTAL FACADE = 1,774 S.F. - GLASS STOREFECHT AND DOOR AREA OF 195 S.F. = 1,575 S.F. 2. A SECTION 9 FACADE WAVER WILL DE REQUESTED AS REDURED TOR FREMINDED METAL FINEL OVERAGE OF 24.7%.



NORTH ELEVATION 4 SOLE MARY 1007 (P4.3)

MATERIAL	ALLOWABLE	PROPOSED	PERCENTAGE
CAST STORE	23.5	0.5,7,	0.05
BRICK.	30 % MNI.	621 5.7.	35.1 %
DFD	25.5	195.5.7.	11.2.5
METAL CANOPIES # SUNSCREENS	15.%	0.5,7,	0.0%
PRETINISHED NETAL PARELS (FLAT)	25.%	250.9.7.	53.7 %
TOTAL		1.769 5.F.	100.0 %

NDTE I I. TOTAL FACADE = 1.769 S.F. - GLASS STOREPEDNT AND DOOR AREA OF D.S.F. = 1.769 S.F. 2. A SECTION 9 FACADE WALVER WILL BE REDULESTED AS REDUIRED FOR HEITINGHED WETAL WALL OVERAGE OF 26.5 %.

NORTH FLEVATION MATERIALS



METAL PATIO RALING -

MATERIAL	ALLOWABLE	PROPOSED	PERCENTAGE
CAST STONE	25 %	0.5.5.	20.0
DRICK.	50 % MN.	41057	30.0%
EIFS CORNICE & FACADE	25 %	2105.5	15.1.5
METAL CANONES & SUNSCREENS	15.%	05 57.	6.1%
PREFINISHED METAL PAHELS (FLAT)	25 %	680 5.7.	48.8%
TOTAL		1.393 5.P.	100.0 %

NDTE - I . TOTAL FACADE + I . GEA 5.F. - GLASS STOREPRONT AND DODK AREA OF 271 - 57. - I . 239.5 5.F. 2. A SECTION 9 FACADE WAVER WIL DE REQUESTED AS REDUIRED POR PREPMISINED VETAL FAULT OVERAGE OF 23.5 %.

	20 % 1/11	410 27.	00,0 %
	25 %	2105.5	15.1.5
200	15.%	05.57.	6.1 %
(T),AT)	25.%	600 5.7.	48.8%
		1.393 5.P.	100.0 %



NOTE : 1. TOTAL FACADE = 5,456 5.F. - GLASS STOREFRONT AND DOOR AREA OF 1,354 5.F. = 4,102 5.F. 2. NO SECTION 9 FACADE WAVEFES ARE REQUIRED.

PRELIMINARY NOT FOR CONSTRUCTION P4.4

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CONCEPT MEETING FEB. 27, 2019 PRE APP, MEETING MAY 8, 2019 PRO REZONING JUNE 28, 2019 PRO REZONING REVISED SUBAITIA SEPTEMBER 30, 20

CAD DWG 5035 COLDR P44 9-30-19.0WG



