

**BARRINGTON PARK**

**PLANNED UNIT DEVELOPMENT AGREEMENT**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (together with its Exhibits, the "Agreement") is made as of \_\_\_\_\_ 2015, by and between \_\_\_\_\_ a Michigan \_\_\_\_\_ ("Developer"), whose address is 2251 N. Squirrel Road, Auburn Hills, Michigan 48326, and the City of Rochester Hills, a Michigan municipal corporation (the "City") whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

**RECITALS:**

A. Developer desires to construct a certain Planned Unit Development ("PUD"), consisting of approximately 15.6 acres of property located north of Auburn Road and east of Barclay Circle in Rochester Hills, Michigan, which property is described on the attached Exhibit A ("Property"). The Property is to be developed as a Planned Unit Development known as "Barrington Park".

B. The preliminary PUD concept plans were approved by the City of Rochester Hills on November 10, 2014.

C. The Property is currently zoned O-I, Office Business.

D. Developer desires to fully develop the Property in accordance with the PUD Plans with certain changes outlined and agreed to herein.

E. The PUD and is proposed to consist of the development of a residential condominium project consisting of no more than 148 single family attached townhouse residential units, as shown on the Final PUD Plans (defined below), together with an area for storm water sedimentation basin and open space, for the use and enjoyment of the residents of the development ("Project").

F. The City has adopted a master land use plan ("Master Plan") to guide the future use and development and redevelopment of property within the City, which includes, among other things, goals relating to meeting the future housing needs of the residents of the City.

G. The Master Plan recommends, among other goals, that the City encourage the development of a diverse range of housing types to meet the needs of people of different ages,

incomes and lifestyles within the City.

H. The Developer and the City believe that the development of the Project will provide attached residential townhomes that are compatible nearby uses and buildings and will be mutually beneficial to the City, the Developer and the residents of the City by providing a needed type of housing for residents in this part of the City.

I. This Agreement, including the Final PUD Plans, comprise a PUD that satisfies the qualifying conditions of the City's Planned Unit Development Ordinance, Sections 138-7.101 et seq., of the City's Zoning Ordinance (the "PUD Ordinance") by providing the following benefits to the City:

- (i) providing an innovative design of single family residential housing within the community;
- (ii) redeveloping currently underutilized parcels of property;
- (iii) achieving economy and efficiency in the use of land in developing a high quality, compact residential development;
- (iv) preserving natural open space within the Project for the use and enjoyment of the residents;
- (v) meeting the housing needs of the citizens of the City, and fulfilling in part, one of the continuing goals of the Master Plan, and thereby improving the public welfare of the community;
- (vi) ensuring City control over the density of the Project, the Project layout, the preservation of open space, the design of the housing units, and other aesthetic features of the Project; and
- (vii) provides a good transition between commercial uses to the west of the Property and single family homes to the northeast.

I. At its meeting of February 17, 2015, the City's Planning Commission reviewed the Final PUD Plans and, by resolution, made a recommendation to the Rochester Hills City Council.

J. The Rochester Hills City Council at a meeting duly held on \_\_\_\_\_, 2015, adopted a Resolution approving this Agreement and the Final PUD Plans.

K. The PUD Ordinance requires the execution and recording of this Agreement in connection with the final approval of the PUD, setting forth the conditions upon which such approval is based.

L. The City desires to ensure that the Property is developed and used in accordance with the approved Final PUD Plans and all applicable laws and regulations.

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

1. Incorporation of Recitals. The parties acknowledge and represent that the foregoing recitals are true and accurate and binding upon the parties, and are incorporated into this Agreement.

2. PUD Approval.

a. The parties acknowledge and agree that the development of the Project has been granted final PUD approval by the City Council in accordance with the PUD Ordinance, subject to the terms of this Agreement and final site plan review required by the Rochester Hills Zoning Ordinance (the "Zoning Ordinance"). Approval of the PUD includes approval of the Final PUD Plans (Exhibit "B") and this Agreement and all Exhibits attached to this Agreement, which take precedence over and supersede any and all prior reports, agreements, plans and other submissions to and/or approvals by the City relative to the Project.

b. The Developer's right to develop the Property as provided for in this Agreement and the Exhibits attached to this Agreement are fully vested upon the City's execution of this Agreement and the granting of site plan approval for the Project from the Planning Commission, subject only to obtaining the required permits under City Ordinances. In the event that any part of this Agreement or the Final PUD Plans is inconsistent in any way with the City Code of Ordinances in existence as of this date, or any City Ordinance that is enacted at any future time, other than the PUD Ordinance, then this Agreement and the Final PUD Plans shall control. This Agreement shall not prevent the City from applying new or amended regulations that do not conflict with this Agreement. Notwithstanding anything to the contrary herein, the Developer shall have no obligation to further develop all or any portion of the Property.

3. Zoning.

a. The parties acknowledge that the Property is currently zoned O-I, Office Business, pursuant to the Zoning Ordinance, and that the PUD Ordinance does not require the rezoning of the underlying zoning classification of the Property to One Family or Multiple Family Residential for the application of the PUD overlay zoning district.

b. The City grants approval of the Project generally in accordance with the Final PUD Plans, comprised of no more than 148 Units for residential use, without any other use approval by the City being required. The parties further agree that development of the Project generally in accordance with the Final PUD Plans is permitted by the City, without any further review, recommendations or approval of the Planning Commission, City Council or any other person, board, committee or department of the City, except for final site plan review and approval by the Planning Commission and the issuance of required permits pursuant to City

Ordinances. It has also been conclusively determined by the City that the Project meets all provisions of the PUD Ordinance.

4. Development Sequence.

a. Phasing. The parties agree and acknowledge that the Final PUD Plans represent the current intent of the Developer to develop the Property, with the knowledge and market condition information possessed by the Developer as of the present date. The parties acknowledge that housing market conditions may change over time, which could cause the Developer to change its plans or timing with respect to the development of the Project. The Project shall be constructed in two phases as set forth in the Final PUD Plans. Prior to commencing Phase 2 of the Project, Developer shall have completed tree removal and mass grading of the Property and shall have constructed and/or installed the utilities, roads, public amenities and perimeter landscaping improvements identified in Phase 1, except that the Developer reserves the right to construct the entrance to the Project at Auburn Road during Phase 1.

b. Timing. Developer shall commence construction of the Project within two years from the Effective Date (as defined in Section 28 below) and shall complete all of the utilities, roads, public amenities and perimeter landscaping serving the Project, all as identified on the Final PUD Plans, within five (5) years from the date tree removal and/or mass grading of the Property commenced. Upon advance written notice to the City, Developer shall be permitted to extend to each of foregoing deadlines in this Section 5.b. for one (1) year and any subsequent requests for an extension shall be at the City Council's sole discretion unless Developer provides "Good Cause" for such an extension. "Good Cause" shall mean any event or circumstance that is not the result of the Developer's act or omission that delays the advancement or completion Project, including but not limited to: changes in the economy or housing market, labor or material shortage, labor strike, weather, or any other act of force majeure.

5. Inapplicability of Land Division Requirements. The City acknowledges that the Developer intends to develop the Property for a residential use, which will not require separate land division approval by the City. The granting of approval of the Final PUD Plans under this Agreement and securing of final site plan approval shall be deemed to satisfy any additional requirements under the Zoning Ordinance or City Code relating to the development of the Property and proposed use.

6. General Requirements of the Project. The Developer agrees that the Project will be developed in accordance with the following requirements:

a. The development shall consist of no more than 148 attached residential townhomes.

b. Exterior elevations of the buildings shall be in substantial conformance with the elevations included as part of the Final PUD Plans and the Rendering of Sample Building Elevation attached hereto as Exhibit C.

c. The Project shall have paved private roads as shown on the Final PUD Plans, which shall be maintained by the Developer or its successors and assigns.

d. The Project shall have sections of concrete sidewalks as shown on the Final PUD Plans.

e. The minimum front yard setbacks, rear yard setbacks and side yard setbacks between buildings shall be as shown on the Final PUD Plans.

f. Identification signage for the Project will be installed in the locations depicted on the Final PUD Plans, in compliance with applicable City Codes and maintained by the Developer or its successors and assigns.

7. The Project, including underground construction, installation of utilities and dewatering, shall not cause damage to or interfere with abutting properties. The Developer shall be responsible for repairing such damage, if that becomes necessary due to any such damage or interference occurring during or within one (1) year after completion of the Project's underground development activities.

8. Landscaping. The Developer shall install landscaping for the Project in substantial conformance with the Tree Replacement and Landscape Plan ("Landscape Plan") included as part of the Final PUD Plans.

9. Open Space. The Project shall have such open space as depicted on the Final PUD Plans.

10. Storm Water Sedimentation Basin. The Developer agrees to construct the storm water sedimentation basin in the location set forth on the Final PUD Plan.

11. Tree Conservation. The Developer agrees to comply with the provisions of the City's Tree Conservation Ordinance, Section 126-326 et seq. of the City Code of Ordinances, as modified by the attached Landscape Plan.

12. Zoning Ordinance Requirements and Modifications. The height, bulk, density and area requirements of the Project shall be as shown on the Final PUD Plans. The Final PUD Plans are generally consistent with the dimensional requirements of the RM-1, Multiple Family Zoning District; however, in recognition of the benefits associated with this PUD, such as deeper setbacks from the Property lines than would otherwise be required, the landscape buffers, additional open space and pedestrian oriented amenities, the City approves the dimensional setbacks, building height, building spacing and length and parking as illustrated on the Final PUD Plans. These dimensions may, dependent upon interpretation of the Zoning Ordinance, involve the following modifications to the RM-1 classification and other Zoning Ordinance standards that would apply:

a. Section 138-6.104.A. A maximum building height from the average grade of thirty-five (35) feet compared to 30 feet in RM-1 (but still less than the height permitted by the underlying OS-1 zoning classification).

b. Section 138-6.100.B. A reduction to 4,591 square feet of lot area per unit (for both two and three bedroom units) as compared to 6,000 and 6,400 square feet required for two and three bedroom units, respectively, which results in a maximum of 148 units (or 9.48 units per acre).

c. Section 138-6.104.G.2. Some of the visitor parking spaces are on the driveways serving the units and, therefore, may not be screened from view of public road, pedestrian path or adjacent single family residential dwelling unit.

d. Section 138-11.200.B. If developed entirely of three bedroom units, the Project would require a minimum of 333 parking spaces, resulting in a permitted maximum of 417 spaces parking spaces. A modification is required to the permitted maximum because the Final PUD Plan depicts 687 parking spaces allocated as follows: 296 in the garages, 296 in the driveways and 95 on streets or lots (391 outside of the garages). The additional parking was provided, in part, to respond to a request from the Planning Commission to include ample visitor parking. The on-street parking also serves as a design amenity to create a more comfortable separation between pedestrians on the sidewalk and travel lanes.

e. Section 138-6.102.A.3. The side yard setback in the RM-1 zoning classification is 30 feet along each side property line plus one foot for each ten feet or part thereof by which length of building containing attached units exceeds 40 feet in overall dimension. The City interprets the east boundary line of the Property to be a side yard. Since the buildings nearest the east boundary line of the Property are between 50 and 59 feet in length, the minimum building setback is 42 feet. While the buildings are set back at least 67 feet, a modification is required because the maneuvering lane between the buildings and the east boundary line of the Property is setback 35 feet. Additional landscaping along the northern portion of the east boundary line of the Property has been provided to offset this minor modification.

No subsequent zoning or other action by the City shall impair the rights of the Developer hereunder, and any further development of the Property by the Developer generally consistent with the Final PUD Plans that does not increase the density of the Property shall be deemed to be a lawful, conforming use. In the event this Agreement or the Final PUD Plans are inconsistent with the City Code of Ordinances, Zoning Ordinances, regulations or design standards in existence on the date of this Agreement, then this Agreement and the Final PUD Plans shall control. Except for any such conflict, the provisions of the Zoning Ordinance through the date of this Agreement, shall apply. To the extent that the City enacts any new regulations governing permitted used of land, density, design, improvement and construction standards and specifications applicable to the development of the Property, such new regulations shall apply to the Property only to the extent they do not conflict with the Agreement and Final PUD Plans, in which case the Agreement and Final PUD Plans shall control. In the event changes in federal or state laws or regulations enacted after the date of this Agreement operate to prevent compliance with parts of the Agreement, or render compliance impractical or unreasonably difficult, the inconsistent provisions of the Agreement shall be modified,

deleted or suspended as necessary to conform to such changes in federal or state law. The parties acknowledge and understand that modifications may be requested by the Developer to vary the strict requirements of City ordinances and design standards.

13. Minor Modifications. The Project may be developed over a period of time during which there may arise a need to make minor changes to the Final PUD Plans. The City hereby delegates to City Staff the right to review and approve the following minor changes to the Final PUD Plans that may be requested by Developer: (a) reduction in the height of any building, or the footprint of any building by no more than ten percent (10%); (b) an increase in the footprint of any building of no more than twenty percent (20%) of the size of the building footprint as indicated on the Final PUD Plans; (c) relocations of any building such that the relocation is in the general vicinity of the footprint of such building as shown on the Final PUD Plans; (d) changes to the floor plans; (e) reduction in on-street parking spaces; and (f) internal rearrangement of parking areas, roads, sidewalks, storm drainage facilities and other utilities, such that the area and density requirements and the overall character of the Final PUD Plans are not materially affected. Any other minor modification sought by Developer that exceeds the authority granted to City Staff in this Section shall be submitted to the Planning Commission for review and approval, with Developer having the right to appeal the Planning Commission's determination to City Council.

14. Site Plan Review. Site plan review for all improvements to be constructed on the Property was submitted to the Planning Commission for review contemporaneous with and as part of the approval of the Final PUD Plan pursuant to the normal process set forth in the Zoning Ordinance. Developer shall have the right to appeal the Planning Commission's determination to City Council. The Site Plan shall expire as provided in Section 138-2.207 of the Zoning Ordinance. Provided that the Developer is proceeding diligently and in good faith and is otherwise in compliance with this Agreement and City ordinances, the City will not unreasonably refuse to extend the site plan approval for the Project upon written request from the Developer. The City and the Developer agree to work together in good faith with respect to the foregoing requirements so as to both accommodate the policies of the City and implement the intent of the Final PUD Plans and Agreement.

15. Building Permits. The procedure for the City to review plans and construction drawings for grading, utilities, landscaping, building and related approvals and permits requested by the Developer for the construction of any improvement on the Property, shall be performed as follows:

a. The City shall review and approve construction drawings and plans submitted by the Developer to the City for review and issue the required land improvement permits, building permits and other permits and approvals in the ordinary course, provided that said plans and drawings comply with the Final PUD Plans, this Agreement, and the City's rules and design standards to the extent such rules and design standards are not inconsistent with the Final PUD Plans or this Agreement, otherwise this Agreement and the Final PUD Plans shall control.

b. The City shall, in the ordinary course, promptly and diligently transmit to appropriate agencies the plans for water, and sanitary sewer for permit processing. Once the

Developer has obtained all pertinent approvals and permits and a pre-construction meeting is held with the City, the Developer may commence construction of the public utilities.

c. It is the intent of the parties that review comments for resubmission shall be made by the City and its planning and engineering departments in the ordinary course. Any review required pursuant to this Agreement by the Planning Commission or City Council shall be placed on the next available agenda of the Planning Commission or City Council as determined by City Staff after review is completed by the City Staff.

d. So long as the Developer is acting with due diligence, makes an initial submission of "as built" plans for site improvements completed at the time of submission, and the Developer's escrow account with the City for the payment of review and inspection fees is current, the City shall not deny the Developer the right for temporary occupancy permits for the reasons that minor improvements are not completed, if such do not relate to health or safety concerns such as lack of water mains, sanitary sewers, or access.

e. The City agrees to cooperate with and support requests by the Developer to any governmental agency or authority with jurisdiction over the Project, for permits, approvals or consents to facilitate the development and construction of the Project generally in accordance with this Agreement and the Final PUD Plans.

16. Consents/Approvals. Whenever the consent, approval or permit issuance of the City Council, Planning Commission or any City commission, department, staff, attorney or representative is required, such consent, approval or permit issuance shall be processed in accordance with the City's standard operating procedures.

17. Sale of Property. The Developer shall have the right to sell, transfer, assign or mortgage all or any portion of the Property. In the event all or any portion of the Property changes ownership or control prior to completion of the Project, the terms and conditions of this Agreement shall be binding on any successor owner of all or any portion of the Property. In the event the Property, or any part, is transferred so that the Property, in its entirety, is owned by more than one person or entity, any breach of this Agreement or violation of any applicable provisions of the City Code of Ordinances occurring on any part of the Property will be the sole responsibility and liability of the person or entity who or which owns that part of the Property on which the breach or violation occurs and will have no effect whatsoever on the other portions of the Property or the owners of such other portions. The City acknowledges and represents that this Agreement may be relied upon for the future land use and development of the Property by the Developer and its successors, assigns, mortgagees and transferees. The Developer agrees that the Property shall be used only as set forth in this Agreement and the Final PUD Plans. Notwithstanding anything in this Agreement to the contrary, the Developer shall have no obligation to develop the Property.

18. Zoning Board of Appeals. The Zoning Board of Appeals shall have the authority to hear and decide appeals by the Developer for variances from the Zoning Ordinance. However, the Zoning Board of Appeals shall not have the authority to change conditions, or make interpretations or amendments to the Agreement or the PUD Final Plans or written conditions, which rights are reserved to the City Council.



19. Integration/Amendments. This Agreement and its Exhibits set forth the entire agreement between the parties relative to the subject matter hereof. No prior or contemporaneous oral or written representations, statements, promises, agreements or undertakings made by either party or agent of either party that are not contained in this Agreement shall be valid or binding. This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement. Amendments to the Final PUD Plans may be submitted by the Developer for review and recommendation by the Planning Commission and approval by City Council.

20. Severability. 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 statute, ordinance, rule, regulation or other applicable law, the validity of the remaining portions or provisions of this Agreement 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 provisions held to be invalid. In the event any changes in applicable federal or state laws or regulations enacted after the date of this Agreement operate to prevent compliance with parts of the Agreement, or render compliance impractical or unreasonably difficult, the inconsistent provisions of this Agreement shall be modified, deleted or suspended as necessary to conform to such changes in federal or state law.

21. Governing Law. 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.

23. Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

24. Remedies. In the event that a party believes that the other party is not acting reasonably or in conformity with this Agreement, then the aggrieved party may petition the Oakland County Circuit Court to resolve such dispute and the parties shall make themselves immediately available for a hearing on a date to be set by the Court. In the event that the Court finds that party has not acted in good faith or in conformity with this Agreement, then the Court may order reasonable costs and attorney fees incurred to the prevailing party. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law and in equity.

25. Inconsistency. To the extent that the Agreement or its Exhibits conflict with City Ordinance or Zoning Ordinance requirements, the terms of this Agreement and its Exhibits will control. Any clerical errors or mistakes in this Agreement or its Exhibits may be corrected by any of the parties, and all parties agree to cooperate in making such corrections in order to effectuate the intent of the parties in entering into this Agreement. Remedial amendments to correct errors and omissions may be approved and executed by the Mayor so long as they are consistent with the spirit and intent of this Agreement, in the Mayor's reasonable judgment. In all events any reference to the City Code of Ordinances, Zoning Ordinances and PUD Ordinance, shall mean the existing Ordinances of the City as of the date of this Agreement.



CITY OF ROCHESTER HILLS,  
a Michigan municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Michigan )

County of Oakland )

The foregoing was acknowledged before me on \_\_\_\_\_, 2015, by  
\_\_\_\_\_, the \_\_\_\_\_ of the City of Rochester Hills, a Michigan  
municipal corporation, on behalf of the corporation.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

Drafted by:

Carson Fischer, P.L.C.  
Gregory T. Obloy, Esq.  
4111 Andover Road  
West-Second Floor  
Bloomfield Hills, MI 48302  
(248) 644-4840

When Recorded Return to:  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

Exhibit A

Legal Description

THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS: CITY OF ROCHESTER HILLS, COUNTY OF OAKLAND, STATE OF MICHIGAN

PART OF THE SOUTHWEST 1/4 SECTION 26, TOWN 3 NORTH, RANGE 11 EAST, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEGINNING AT POINT DISTANT SOUTH 89 DEGREES 35 MINUTES 00 SECONDS WEST 20 FEET AND NORTH 00 DEGREES 25 MINUTES 00 SECONDS WEST 60 FEET FROM SOUTH 1/4 CORNER; THENCE SOUTH 89 DEGREES 35 MINUTES 00 SECONDS WEST 757.75 FEET; THENCE NORTH 00 DEGREES 25 MINUTES 00 SECONDS WEST 200 FEET; THENCE ALONG CURVE CONCAVE EASTERLY, RADIUS 3078.22 FEET, CHORD BEARS NORTH 00 DEGREES 13 MINUTES 20 SECONDS EAST 68.66 FEET, DISTANCE OF 68.66 FEET; THENCE ALONG CURVE CONCAVE WESTERLY, RADIUS 95.23 FEET, CHORD BEARS NORTH 10 DEGREES 58 MINUTES 30 SECONDS WEST 39.07 FEET, DISTANCE OF 39.34 FEET; THENCE ALONG CURVE CONCAVE EASTERLY, RADIUS 95.23 FEET, CHORD BEARS NORTH 10 DEGREES 14 MINUTES 40 SECONDS WEST 41.44 FEET, DISTANCE OF 41.77 FEET; THENCE ALONG CURVE CONCAVE EASTERLY, RADIUS 3095.22 FEET, CHORD BEARS NORTH 05 DEGREES 21 MINUTES 35 SECONDS EAST 328.04 FEET, DISTANCE OF 328.19 FEET; THENCE NORTH 08 DEGREES 23 MINUTES 50 SECONDS EAST 200.15 FEET; THENCE SOUTH 81 DEGREES 36 MINUTES 10 SECONDS EAST, 259.21 FEET; THENCE NORTH 63 DEGREES 51 MINUTES 46 SECONDS EAST 305.71 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 00 SECONDS EAST 26.66 FEET; THENCE NORTH 00 DEGREES 25 MINUTES 00 SECONDS WEST 45 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 00 SECONDS EAST 149.30 FEET; THENCE SOUTH 00 DEGREES 25 MINUTES 00 SECONDS EAST 1010 FEET TO BEGINNING.

TAX PARCEL NO.: 15-26-376-007

Exhibit B  
Final PUD Plans

Exhibit C  
Elevations