

PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement (the “Agreement”) is executed this ___ day of _____, 2019 between THE CITY OF ROCHESTER HILLS, a Michigan city, with its offices located at 1000 Rochester Hills Dr, Rochester Hills, Michigan 48307 (the “City”), and OYK Rochester, LLC, a Michigan limited liability company, having an address at 1888 W Tahquamenon Ct, Bloomfield Hills, MI 48302 as owner of the subject property (the “Developer”).

RECITALS

A. The Developer owns approximately 5.739, acres of real property located at the North East corner of W Auburn Rd and Livernois Rd in Rochester Hills, Oakland County, Michigan (the “Property”), more specifically described on the attached Exhibit A.

B. The Developer applied to the City for approval to develop the Property as a Planned Unit Development (“PUD”). The site is zoned B-1 Local Business District with FB-2 Flex Business Overlay and RM-1 Multiple Family Residential District with FB-1 Flex Business Overlay. The Developer plans to develop the site with a PUD option.

C. The Developer shall develop the Property only as specified in the approved final PUD site plan consistent with all conditions and requirements (hereinafter, the development of the Property shall be referred to as the “Project”).

D. In reliance on their mutual promises, and in order to memorialize their understanding, the parties have determined to enter into this Agreement. Agreement shall take effect upon execution by the parties and recording at the Oakland County Register of Deeds.

AGREEMENT

For good and valuable consideration, including the covenants, agreements, and pledges contained herein, the parties agree as follows:

1. **Intended use, density, and dimensional provisions.**

- (a) The permitted use is for a proposed mixed use development consisting of residential units, office and retail space
- (b) The density of the project will be 21.14 du/ac, in accordance to city requirements.
- (c) The intensity of the project will not exceed the city maximum requirement of 10 fc. anywhere on-site, 1 fc. at ROW, & 0.5 fc. at any other property line.
- (d) Dimensional provisions: see attached exhibit C for details.

2. **Compliance with all Laws, Ordinances, Approvals, and Permits.** The Developer agrees to construct, install, and operate the Project in accordance with approvals received from the City and all governmental entities with applicable jurisdiction. In constructing and operating the Project, the Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Agreement and the City's Zoning Ordinance.

3. **Compliance with all City Approvals.** The Developer will design, develop, construct, and operate the Project in accordance with any and all approvals and conditions of approval received from the City and/or its various bodies, officers, departments, and commissions. Including, but not limited to, conditions, terms, restrictions, and requirements for on-site or off-site improvements and contributions to public facilities.

(a) **Final PUD Site Plan:** Prior to the issuance of foundation or building permits for any sequence of the Project (and prior to any construction of any improvement, building, or structure commencing on the Property), the Developer shall submit for the review and approval of the City Planning Commission a final PUD site plan for the relevant sequence. In its review of each proposed final PUD plan, the Planning Commission shall conduct and rely on the standards for review contained in the City's Zoning Ordinance.

(b) **Final PUD Agreement:** Prior to issuance of foundation or building permits for any sequence of the Project (and prior to any construction of any improvement, building, or structure commencing on the Property), both parties shall agree to the terms and conditions set forth in this PUD Agreement.

(c) **Timeframe for Commencement and Completion of Improvements:** in association to the PUD, the developer shall be required to obtain site plan approval and building permit approval and commence these improvements within one year of the approval of the Final PUD plan and agreement. All site improvements shall be completed within 36 months after building permits are obtained.

4. **Common Areas and Maintenance.** In accordance with PUD guidelines,

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the Project shall include Public Outdoor Amenity Space as indicated in PUD Submittal. The Outdoor Amenity Areas shall be retained as open space for the general public's common use. Such spaces are privately owned, nevertheless, the Developer shall be responsible for ongoing care and maintenance of Public Outdoor Amenity Spaces, and must continue to do so in perpetuity as Owner of the Property. Developer must ensure that any future Property Transfers include adequate provisions for the ongoing care and maintenance of the Public Outdoor Amenity Spaces. The City shall be held harmless and indemnified by Developer from any and all liability or maintenance responsibility for or in connection with the open space.

5. **Streets and Right-of-Way.** Exhibit B shows the proposed public and/or private street right of ways and streets for the Project. The Developer shall construct all public and/or private streets within the Project. Upon the completion of the construction of any public right-of-way and inspection and approval of the same by the Road Commission for Oakland County, such rights-of-way shall be conveyed to the Road Commission through proper conveyance document and recordation. Upon the completion of the construction of internal roads they shall be inspected and approved by the City.

6. **Public Utilities.** Public electricity, telephone, gas, water and sanitary sewer service ("Public Utilities") shall be provided to the Project by the Developer. Public Utilities shall be installed and maintained underground as required by the City. Prior to the issuing of any foundation or building permits for the Project, the Developer shall provide all public easements reasonably necessary, in such locations approved in advance by the relevant utility service provider and the City. All reasonably necessary easements for water and sanitary sewer service shall be granted to Oakland County and/or the City, respectively. Thereafter, and before issuing any building permits of the Project, final construction drawings for the Project shall be submitted for the review and approval of the City Engineer and the City.

7. **Landscaping.** Landscaping shall be incorporated and installed by the Developer on the Property in accordance with a landscaping plan as approved by the City.

(a) The Developer is responsible for maintaining all Outdoor Amenity Areas within the Development, which maintenance shall include, but is not limited to: mowing all turf areas, trimming trees and shrubs, watering all landscaped areas, as well as appropriate maintenance of all amenities.

(b) Outdoor Amenities such as walkways, gazebos and art installations shall be installed by the Developer with the corresponding phase of the development.

8. **Architecture.** Architectural standards shall be in accordance with the approved PUD.

9. **Amendments to the PUD Plan.** The Preliminary and Final PUD site plan may be amended in the future consistent with City Ordinance. This Agreement may only be amended in writing, signed by all parties.

10. **Violation of this Agreement.** The parties acknowledge that in the case of a breach of this Agreement, the City may utilize any and all remedies available to them under

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City ordinances and State law. In the event there is a violation(s) or alleged violation(s) of the terms or conditions of the Agreement by the Developer, then the City shall serve written notice upon the Developer setting forth the manner in which Developer has violated the Agreement, and such notice shall include a demand that the violation(s) be cured within a stated reasonable time period. Violation of this Agreement by the Developer shall be deemed a nuisance *per se*. Should a court of competent jurisdiction find the Developer to be in breach of any provision of this Agreement or the PUD approval (in whole or in part), then the Developer shall be required to reimburse the City for its reasonable attorney fees and costs. Additionally, the City shall have the right to utilize stop work orders as appropriate for any violations. All of the remedies of the City shall be deemed to be cumulative.

11. **Amendment.** Except as otherwise provided by the contract, regulations governing permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the property shall be the regulations in force at the time. The PUD contract shall not prevent the City from applying new or amended regulations that do not conflict with the PUD contract.

12. **Recording and Binding Effect.** The obligations under this Agreement are covenants that permanently run with the land, and shall bind all successors in title as to the Property (as well as any and all portions thereof), including, but not limited to, successor developer(s) and the purchasers and owners of any individual lot, parcel, or unit within the Property. It is the parties' intent that this Agreement will be recorded with the Oakland County Register of Deeds. The Developer is responsible for all costs associated with recording the Agreement. A copy of the recorded agreement shall be submitted to the City.

13. **Heading and Recitals.** The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties acknowledge and agree, however, that the recitals hereto are and shall be considered an integral part of this agreement proper to its correct understanding and interpretation.

14. **Miscellaneous.**

(a) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be constructed in all respects as if any invalid or unenforceable provision were omitted.

(b) **Notices.** Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

(c) **Waiver.** No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

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(d) Governing Law. This Agreement is being executed and delivered and is intended to be performed in the state of Michigan and shall be constructed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof. If changes in federal or state laws or regulations enacted after the contract has been executed operate to prevent compliance with parts of the contract, 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.

(e) Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so (and can fully bind their respective party) and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.

(f) Fees. The Developer shall pay any and all applicable building permit, zoning, and other fees to the City.

The parties have executed this Agreement on the day and year first above written.

EXHIBIT A

LEGAL DESCRIPTION:

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

PART OF THE SOUTHWEST ¼ OF SECTION 27, T.3N, R.11E, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT DISTANT ALONG THE WEST LINE OF SECTION 27, ALSO ALONG THE CENTERLINE OF LIVERNOIS ROAD N.01'53'23"W., 308.00 FEET ALONG SAID CENTERLINE AND N.87'48'02"E., 33.00 FEET TO THE EAST LINE OF LIVERNOIS ROAD FROM THE SOUTHWEST CORNER OF SAID SECTION 27; THENCE FROM SAID POINT OF BEGINNING N.01'53'23"W., 30.00 FEET; THENCE N.87'48'02"E., 300.00 FEET; THENCE S.01'53'23"E., 30.00 FEET; THENCE N.87'48'02"E., 612.18 FEET; THENCE S.02'11'58"E., 275.00 FEET; THENCE S.87'48'02"W., 713.67 FEET; THENCE N.01'53'23"W., 150.00 FEET S.87'48'02"W., 50.00 FEET; THENCE N.01'53'23"W., 125.00 FEET; THENCE S.87'48'02"W, 150.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.85 ACRES.

TAX ITEM NO. 15-27-351-007

PARCEL A

A PARCEL OF LAND BEING A PART OF THE S.W. ¼ OF SECTION 27, T.3N., R.11E, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27, T.3n., R.11E.; THENCE N.00'11'32"E., 60.00 FEET ALONG THE WEST LINE OF SAID SECTION 27 (LIVERNOIS ROAD); THENCE N.89'53'39"E., 60.00 FEET TO THE BOINT OF BEGINNING; THENCE N.00'11'32"E., 122.91 FEET; THENCE S.89'48'28"E., 81.47 FEET; THENCE S.45'00'16"E., 57.50 FEET; THENCE S.00'11'58"E., 81.75 FEET; THENCE S.89'53'39"W., 122.82 FEET TO THE POINT OF BEGINNING.

PARCEL B

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST ¼ OF SECTION 27, T.3N., R.11E, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27, T.3N., R.11E.; THENCE N.00'11'32"E., 183.23 FEET ALONG THE WEST LINE OF SAID SECTION 27 (LIVERNOIS ROAD); THENCE S.89'48'28"E., 60.00 FEET TO THE POINT OF BEGINNING; THENCE N.00'11'32"E., 50.00 FEET; THENCE N.89'48'28"W., 27.00 FEET; THENCE N.00'11'32"E, 75.00 FEET; THENCE N.89'48'02", 150.00 FEET; THENCE S.00'11'32"W., 125.00 FEET; THENCE N.89'48'02"E., 50.00 FEET; THENCE S.00'11'32"W., 123.38 FEET; THENCE S.89'53'39"W., 50.18 FEET; THENCE N.00'11'58"W., 81.75 FEET; THENCE N.45'00'16"W., 57.50 FEET; THENCE N.89'48'28"W., 81.47 FEET TO THE POINT OF BEGINNING.

SURVEY DESCRIPTION OF PARCELS A AND B COMBINED:

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST ¼ SECTION OF 27, T.3N., R.11E, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27, T.3N., R.11E; THENCE N.00'11'32"E., 60.00 FEET; N.89'53'39"E., 60.00 FEET TO THE POINT OF BEGINNING; THENCE N.00'11'32"E., 172.91 FET; THENCE N.89'48'28"W., 27.00 FEET; THENCE N.00'11'32"E., 75.00 FEET; THENCE

N.89'48'02"E., 150.00; THENCE S.00'11'32"W., 125.00 FEET; THENCE N.89'48'02"E.,
50.00 FEET; THENCE S.00'11'32"W., 123.38 FEET; THENCE S.89;53'39"W., 173.00 FEET
TO THE POINT OCF BEGINNING.
TAX ITEM NO. 15-27-351-008

Exhibit C

SITE DATA

Regulation	Information
Parcel I.D.	# 15-27-351-007 / 15-27-351-008
Address	Auburn / Livernois Rd., Rochester Hills, MI
Zoning	B1 / RM - 1 / FB - 1
Parcel Area	(249,995 Sq.Ft.) 5.739 Acres

BUILDING INFORMATION

Building A (West corner)	1st Floor - 10,532 GSF 2nd Floor - 10,408 GSF Total - 20,940 GSF	
Building B (Middle)	1st Floor - 15,897 GSF 2nd Floor - 31,362 GSF 3rd Floor - 30,818 GSF Total - 78,077 GSF	73 Units
Building C (East)	1st Floor - 17,520 GSF 2nd Floor - 17,488 GSF 3rd Floor - 17,316 GSF Total - 52,324 GSF	47 Units
Total Unit Count Detached Garage		120 Units
Building F	3,036 GSF	Construction Type IIB

ZONING SCHEDULE OF REGULATIONS

Regulation	Required for R-4	Provided
Setbacks	Front: 25' Sides: 10' each/20' total Rear: 35' 100' from Residential	Front: A-35.0' / B 18.7' / C 17.6' Sides: 73.5' / 150.1' Rear: 71.8' / 77.9' / 80.0'
Building Height	Maximum: 2 stories/30'	35' (3 Stories w/ Lower Level)
Coverage	Maximum: 30%	36,062 SF Total Footprint: 23.21%
Density	No max. w/FB overlay	24.11 Units per Acre

PARKING SUMMARY

Regulation	Required	Provided
Non-Residential	1 Space / 400' = 52 Spaces	10 Garage Spaces 70 Carport Spaces 165 Open Spaces
Multi-Family	1.5 Spaces / Unit 120 Units = 180 Spaces	
Total	232 Total Spaces Required	245 Total Spaces Provided with 12 Accessible Parking Spaces