

OAKVILLE ESTATES
PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT ("**Agreement**") is made as of _____, 2007, by and between **Oakville Estates, LLC**, a Michigan limited liability company ("**Developer**"), whose address is 42850 Schoenherr Road, Sterling Heights, Michigan 48313, and the **City of Rochester Hills**, a Michigan municipal corporation ("**City**") whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

R E C I T A L S :

A. Developer desires to develop approximately 25.755 acres of property located north of School Road and east of John R Road in Rochester Hills, Michigan, which property is described on the attached **Exhibit A** ("**Property**") and is currently zoned R-3.

B. Developer has submitted an application ("**PUD Application**") to the City to develop the Property under the planned unit development ("PUD") provisions of the City's Planned Unit Development Option, being Sections 138-1001 through 138-1009 of the City's Zoning Ordinance ("**PUD Ordinance**"), for a residential PUD for the development of ranch-style condominiums, comprised of high quality, high value condominium units that would be affordable and desirable for residents to own and occupy within the City, and help meet a housing need within the City.

C. The proposed PUD for the Property, to be known as "**Oakville Estates**," consists of the development of 122 attached ranch-style condominium units as shown on the Final PUD Plan ("**Units**"), and preserves a natural area of open space in the northeast corner of the Property as a natural park for the use and enjoyment of the residents of the development ("**Project**").

D. In March 2005, Developer submitted a rezoning request to the City for the Property, along with a preliminary site plan and elevations. After further discussion with the City, the rezoning request was modified to a PUD submittal. The Planning Commission has reviewed the preliminary site plan at subsequent workshops, and found the preliminary site plan to be generally acceptable, subject to final review and approval as part of the site plan review process.

E. The City has adopted a master land use plan ("**Master Plan**") to guide the future 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.

F. 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.

G. Developer and the City believe that the development of the Project will provide affordable, high quality ranch-style condominiums which will be mutually beneficial to the City, Developer, and the residents of the City, by providing a needed type of housing for residents of the City.

H. As requested by the City, Developer has prepared a project land use plan to meet the requirements of the PUD Ordinance and other applicable City Code standards, subject to such deviations as are shown on the plan, which is attached as **Exhibit B ("Final PUD Plan")**.

I. This Agreement and the Final PUD Plan comprise a PUD that satisfies the qualifying conditions of the PUD Ordinance by providing the following benefits to the City that would not, or may not result from a rezoning of the Property to RM-1:

- (i) providing an innovative design of ranch style condominium housing within the community;
- (ii) redeveloping parcels of property currently underutilized with single family homes;
- (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 a particular group of citizens of the City, specifically empty nesters and senior citizens, who will be ideal prospective purchasers of the ranch-style condominium units in the Project, 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;
- (vii) enhancing existing wetlands within the Project;
- (viii) contributing funds to the City for the future paving of School Road when deemed appropriate by the City;
- (ix) donating right of way to the City along the John R Road and School Road frontage of the Property; and
- (x) extending the pathway along the John R Road frontage of the Property south to School Road.

J. The PUD has undergone preliminary review by the Rochester Hills Planning Commission ("**Planning Commission**") and the Rochester Hills City Council ("**City Council**").

K. The Planning Commission, after giving proper notice, held a public hearing on _____, at which the Final PUD Plan and this Agreement were considered, and comments and recommendations of the public were received and heard.

L. The City Council, at a meeting duly held on _____, adopted a resolution approving the Final PUD Plan and this Agreement.

M. 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.

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

NOW, THEREFORE, Developer and the City, in consideration of the mutual covenants, promises, and conditions described in this Agreement, and with the express understanding that this Agreement contains important and essential terms as part of the final approval of the 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 Zoning Ordinance. Approval of the PUD includes approval of the Final PUD Plan 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. Developer's rights 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 Plan is inconsistent in any way with the City Code of Ordinances in existence as of the date of this Agreement, or any City Ordinance that is enacted at any future time, other than the PUD Ordinance, then this Agreement and the Final PUD Plan shall control. This Agreement shall not prevent the City from applying new or amended regulations that do not conflict with this Agreement. Notwithstanding the foregoing to the contrary, 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 R-3 pursuant to Section 138-256 *et. seq.* of the City's Zoning Ordinance, and that the PUD Ordinance does not require the rezoning of the underlying zoning classification of the Property to RM-1 for the application of the PUD overlay zoning district, which is the zoning classification applicable to the attached ranch-style condominium units to be developed as part of the Project.

b. The City grants approval of the Project generally in accordance with the Final PUD Plan for the one story condominium development comprised of no more than 122 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 Plan is permitted by the City, without any further review, recommendation and/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.** The parties agree and acknowledge that the Final PUD Plan represents the current intent of Developer to develop the Property, with the knowledge and market condition information possessed by Developer as of the present date. The parties acknowledge that housing market conditions may change over time, which could cause Developer to change his plans and/or timing with respect to the development of the Project. The parties further acknowledge that the buildings and improvements as shown on the Final PUD Plan may be constructed, if at all, at different dates in the future, and that Developer may elect to develop such improvements in the order and at such times as it determines necessary and appropriate, in its discretion, if at all. Site improvements reasonably necessary or reasonably related to any particular building, including without limitation road improvements, storm drainage facilities, sidewalks and landscaping, will be made at the time of construction of such particular building, as determined through the site plan process. The Project may be developed in two phases, as shown on the Final PUD Plan. In the event the Project is to be phased, Developer shall complete all site improvements necessary for the operation of the first phase during the development of the first phase. Given the uncertain market conditions existing for the sale of Units within the Project, it is the intent of Developer to (a) commence construction of the Project within two (2) years following issuance of a land improvement permit by the City; (b) complete all utilities and roads in Phase 1 of the Project within two (2) years after commencement of Project construction; and (c) complete all utilities and roads in Phase 2 of the Project within five (5) years after commencement of Project construction. Provided that Developer is proceeding in good faith to develop the Project in light of existing economic conditions, and is otherwise in compliance with this Agreement and City ordinances, the City will not unreasonably refuse to extend the time period for Project completion for a reasonable time to enable Developer to complete the Project.

5. **Inapplicability of Land Division Requirements.** The City acknowledges that Developer intends to develop the Property as a condominium which will not require separate land division approval. The granting of approval of the Final PUD Plan 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 condominiums.

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

a. The development shall be a residential condominium comprised of attached one story ranch style residences, with a minimum of two bedrooms and two bathrooms.

b. All Units shall have a minimum living area of 1,500 square feet per Unit.

c. All Units shall have attached 2 car garages.

d. All Units shall have at least fifty (50%) percent brick on all four sides, and the front elevation of each Unit shall be all brick, stone or similar material below the soffit level. The exterior elevations shall be in substantial conformance with the elevations attached hereto at **Exhibit C**, and the materials and colors for the building exteriors shall be substantially as shown on **Exhibit D** attached hereto. Notwithstanding the elevations attached at **Exhibit C** to the contrary, the parties agree that some of the units, where the grade permits, may have daylight windows installed in the rear or sides of such units, in accordance with City standards.

e. The Project shall have paved private roads as shown on the Final PUD Plan and the cross-section drawing attached hereto at **Exhibit E ("Cross-Section")**, which shall be maintained by the condominium association, and Developer shall provide the City with a copy of the private road maintenance agreement of the Project as set forth in the recorded condominium documents of the Project. The parties agree that Developer shall construct the access road from the Project to School Road at the time of construction of the other roads within the Project, but that Developer shall install a break-away barrier upon such road at School Road, which barrier shall enable emergency vehicle access to the Project, and shall be constructed to standards approved by the City. At the time the City paves School Road, then upon the request of the City, Developer (or the condominium association if the condominium has been turned over by the Developer to the association), shall remove such barrier at its expense, which shall open such road for normal access for vehicular traffic.

f. The Project shall have concrete sidewalks as shown on the Final PUD Plan and the Cross-Section.

g. The minimum setbacks along John R Road and School Road, and the minimum front yard setbacks, rear yard setbacks and side yard setbacks between buildings shall be as shown on the Final PUD Plan. The minimum front yard building setback shall be twenty-five feet (25').

h. Identification signage for Oakville Estates will be installed in compliance with applicable City Codes, and maintained by the condominium association in accordance with the Master Deed. Developer shall have the right, but not the obligation, to erect an identification sign near the School Road entrance on the Final PUD Plan at the time the entrance from the Project to School Road is opened for travel, as permitted by applicable City Codes.

7. **Dedication of Road Right of Way.** Prior to any land improvement permits being issued for the Project, Developer shall dedicate and convey to the City right of way along the John R Road and School Road frontages of the Property, as shown on the Final PUD Plan.

8. **Contribution for Paving of School Road.** Prior to a land improvement permit being issued for the Project, Developer shall make a cash contribution ("**Contribution**") to the City in an amount equal to the City's cost to pave that portion of School Road adjacent to the Project (the north half section of such adjacent portion of School Road only), per the City's standard detail pavement cross-section at the time of construction of the Project. Such Contribution shall also include a deposit into the City's pathway fund for a path to be constructed along School Road adjacent to the Project. The City shall hold the Contribution until such time as the City decides to pave School Road from Dequindre Road to John R Road, at which time the City may use the Contribution for such paving project. The City agrees not to use the Contribution for any other purpose.

9. **Pathway Extension.** An eight foot (8') wide asphalt pathway shall be installed by Developer at its expense within the right of way of John R Road adjacent to the Property, from the northern boundary of the Property along John R Road to the corner of John R. Road and School Road as shown on **Exhibit B**, in accordance with City Ordinances, within the City right of way along John R Road. Developer shall have no obligation to acquire additional right of way, or to construct the pathway along John R Road in any area where the City does not own such right of way or have an easement for the construction of the pathway in such area. In any such areas, the City will use commercially reasonable efforts to obtain such right of way, and if unsuccessful by the time Developer is ready to construct the pathway along John R Road, then Developer may either construct the pathway where the City has right of way and/or easements, and contribute to the City's pathway fund for the future construction of all segments of pathway where the City does not have right of way and/or easements, or contribute into the pathway fund for all such parcels south of the Project to School Road.

10. **Landscaping.** Developer shall install landscape screening between the Project and adjacent properties used for single family residences as set forth on the landscape screening plan attached at **Exhibit F ("Landscape Plan")**. The landscape buffer shall be as shown on the Landscape Plan, and decks or patios may be attached to the units provided that they are no closer than fifteen feet (15') to the property line. The Master Deed for the Project shall provide that such landscape buffer installed by Developer shall be maintained by the condominium association. The Master Deed will further provide that in the event landscaping on the Landscape Plan must be removed to repair or replace any storm water detention facilities within the Project, the condominium association will be responsible for replacing any such landscaping at its expense. Developer agrees to install landscaping within the Project in conformance with the Landscape Plan. Developer and/or the condominium development shall have the right to exceed the landscaping set forth on the attached plan, or substitute comparable landscaping, with the prior approval of City Staff.

a. Developer shall install the landscaping as shown on the Landscape Plan (i) on the west and south sides of the detention basin and on the south side of the building labeled "32" on the Site Plan along School Road to grade within fifty feet (50') west of the proposed Napa Drive, and (ii) along the John R Road frontage of the Project, including the entrance landscaping to grade, no later than ninety (90) days after completion of the models in the Project, weather permitting. If weather conditions do not permit installation of such landscaping within this 90-day time period, then Developer will install such landscaping as soon as reasonably possible after the weather permits. The

City will permit Developer to tap into the water line along School Road and install an area meter for the purpose of temporarily irrigating such landscaping, until the irrigation system in the Project is fully operational, with no tap fees being charged to Developer.

11. **Open Space.** The Project has preserved approximately 10.24 acres (or more than 39% of the Property) as open space, including a 2.71 acre park in the northeast corner of the Property to be preserved in its natural condition. Developer or the condominium development shall not construct any permanent buildings or structures within the open space area without the prior written permission of the City.

12. **Wetland, Natural Features Setback and Storm Drainage Requirements.**

a. *Wetlands.* Developer shall comply with any applicable requirements of the City Code of Ordinances and of the Michigan Department of Environmental Quality ("MDEQ") relating to wetlands. The parties further acknowledge that Developer may be required by Section 126.491 *et. seq.*, of the City Code of Ordinances to obtain a wetlands use permit from the City for the low quality wetland that exists at the northeast corner of the Property ("Wetland A") for the installation of an elevated pedestrian bridge to the natural open space area for the enjoyment of the residents of the Project, and the City agrees to diligently process and review such application in good faith.

b. *Natural Features Setback.* (i) The parties acknowledge that there is a low quality wetland area on the property adjacent to the detention basin proposed at the southwest corner of the Property ("Wetland B"). Developer has agreed to construct a landscape buffer to segregate such Wetland B from the detention basin serving the Project as shown on the Final PUD Plan, which should enhance Wetland B. Therefore, the City agrees to waive the natural features setback on the Property adjacent to Wetland B as shown on the Final PUD Plan, in accordance with Section 138-1076(d) of the Zoning Ordinance. (ii) The City also agrees to temporarily waive the natural features setback adjacent to Wetlands A as shown on the Final PUD Plan for the purposes of the development of the Project and construction of the Units. Upon completion of such development and construction activities, Developer shall restore such natural features setbacks to substantially the same condition that existed prior to any activity by Developer in such areas. In granting these waivers, the City has determined that the proposed development of improvements and construction of the same, in accordance **Exhibit B**, are not likely to endanger or materially and adversely affect any natural features adjacent to such setbacks.

c. *Storm Water Detention/Retention Basins.* Developer agrees to construct storm water detention/retention basins in the locations approved by the City in accordance with City requirements. Developer shall maintain the storm water detention/retention basins in compliance with applicable standards until the condominium association is turned over to unit owners, at which time the condominium association shall be responsible for such maintenance. Developer shall enter into a storm water detention/retention basin maintenance agreement with the City, which shall be satisfactory to the City and which shall be recorded.

d. *Fencing of Storm Water Detention/Retention Basins.* If the storm water detention/retention basins required for the development cannot be reasonably designed and constructed in the area of the site set aside by Developer for such detention/retention basins, with a slope of 1:6 or flatter, Developer agrees to install a

fence around the storm water detention/retentions basin in accordance with current City requirements and approved as part of final site plan review.

13. **Tree Conservation.** Developer agrees to comply with the provisions of the City's Tree Conservation Ordinance, Section 126-261 *et. seq.* of the City Code of Ordinances ("**Tree Conservation Ordinance**").

14. **Zoning Ordinance Requirements.** The height, bulk, density and area requirements of the Project shall be as shown on the Final PUD Plan, and if not on the Final PUD Plan shall be as set forth in the current Zoning Ordinance. No subsequent zoning or other action by the City shall impair the rights of Developer hereunder, and any further development of the Property by Developer generally consistent with the Final PUD Plan 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 Plan are inconsistent with the City Code of Ordinances, regulations or design standards in existence on the date of this Agreement, then this Agreement and the Final PUD Plan 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 uses 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 Plan, in which case the Agreement and Final PUD Plan 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 Developer to vary the strict requirements of City ordinances and design standards.

15. **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 Plan. The City hereby delegates to City Staff the right to review and approve the following minor changes to the Final PUD Plan 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 Plan, provided that the increase in the footprints of all buildings as shown on the Final PUD Plan are not increased by more than ten percent (10%) in the aggregate; (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 Plan; and (d) 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 Plan 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.

16. **Site Plan Review.** Site plan review for all improvements to be constructed on the Property or the addition to or modification of any buildings or improvements shall be submitted to the Planning Commission for review 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. Any site plan submitted by Developer shall comply with all applicable fire department, engineering and floodplain rules, regulations and design standards

of the City, except as modified hereby, and shall demonstrate that sufficient storm drainage and sanitary sewer capacity exists. The site plan shall be submitted and approved within two (2) years after execution of this Agreement. Provided that 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 application by Developer. The City and 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 Plan and PUD Agreement.

17. **Building Permits.** The procedure for the City to review plans and construction drawings for clearing, grading, utilities, landscaping, building and related approvals and permits requested by 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 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 Plan, 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 Plan or this Agreement, otherwise this Agreement and the Final PUD Plan 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 Developer has obtained all pertinent approvals and permits and a pre-construction meeting is held with the City, 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 Developer is acting with due diligence, makes an initial submission of "as built" plans for site improvements completed at the time of submission, and Developer's escrow account with the City for the payment of review and inspection fees is current, the City shall not deny 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 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 Plan.

18. **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.

19. **Sale of Property.** Developer shall have the right to sell, transfer, assign and/or mortgage all or any portion of the Property, including any completed condominium units. In the event all or any portion of the Property changes ownership or control prior to completion of the condominium development, 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 provision 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 Developer and its successors, assigns, and transferees. Developer agrees that the Property shall be used only as set forth in this Agreement and the Final PUD Plan. Notwithstanding anything in this Agreement to the contrary, Developer shall have no obligation to develop the Property.

20. **Zoning Board of Appeals.** The Zoning Board of Appeals shall have the authority to hear and decide appeals by 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 PUD Agreement or the PUD Final Plan or written conditions, which rights are reserved to the City Council.

21. **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 Plan may be submitted by Developer for review and recommendation by the Planning Commission and approval by City Council.

22. **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 provision 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.

23. **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.

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

25. **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.

26. **Inconsistency.** To the extent that the Agreement and/or its Exhibits conflict with City 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 shall mean the existing Ordinances of the City at time of execution of this Agreement, and reference to the PUD Ordinance shall mean the PUD Ordinance provisions attached at **Exhibit B**.

27. **Authority.** 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.

28. **Limitation of City's Liability.** This PUD is a private undertaking, and the parties understand and agree that: (a) this PUD is private development; (b) the City has no interest or responsibilities for or duty to third parties concerning any improvements on the Property except and only until such time that the City accepts any public improvements pursuant to this Agreement and the Final PUD Plan; (c) Developer shall have full and exclusive control of the Property subject to the limitations and obligations of Developer under this Agreement; and (d) the contractual relationship between the City and Developer is such that Developer is an independent contractor and not an agent, partner or joint venturer of or with the City.

29. **Binding Effect.** This Agreement shall not be effective until the effective date of the City's Ordinance rezoning the Property to PUD, or until the Agreement is recorded in the office of the Oakland County Register of Deeds and a certified copy of the recorded Agreement has been delivered to the City, whichever occurs later. This Agreement shall run with the land and bind the parties, their heirs, successors, and assigns. It is also 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.

[Signatures Follow on Next Page]

This Agreement has been executed on later of the signature dates set forth below.

DEVELOPER:

OAKVILLE ESTATES, LLC,
a Michigan limited liability company

By: _____
Gregory Cueter, Manager

STATE OF MICHIGAN)
) SS:
COUNTY OF MACOMB)

The foregoing was acknowledged before me on _____ 2007,
by Gregory Cueter, Manager of Oakville Estates, LLC, a Michigan limited liability company, on
behalf of the company.

Notary Public, County of _____
State of Michigan.
My Commission Expires: _____
(Acting in _____ County)

CITY:

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation

By: _____
Bryan K. Barnett, Mayor

and

By: _____
Jane Leslie, City Clerk

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing was acknowledged before me on _____ 2007, by Bryan K. Barnett and Jane Leslie, Mayor and City Clerk, respectively, of the City of Rochester Hills, a Michigan municipal corporation, on behalf of the corporation.

Notary Public, County of _____
State of Michigan.
My Commission Expires: _____
(Acting in _____ County)

Prepared By and When Recorded,
Return To:

John D. Gaber, Esq.
Williams, Williams, Rattner & Plunkett, P.C.
380 N. Old Woodward Avenue, Suite 300
Birmingham, Michigan 48009

INDEX OF EXHIBITS

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EXHIBIT A

Legal Description of Property

Part of the NW 1/4 of Section 24, T.3N., R.11E., Rochester Hills, Oakland County, Michigan, being more particularly described as follows:

Beginning at a point which is S87°37'27"E 769.35 feet along the East-West 1/4 line of Section 24 and centerline of School Road (North 43 ft wd. R.O.W.) and N00°42'00"E 43.02 feet to the North R.O.W. line of School Road (North 43 ft wd. R.O.W.) from the West 1/4 corner of Section 24; thence continuing N00°42'00"E 833.35 feet; thence S87°36'01"W 720.03 feet to the East 60 ft R.O.W. line of John R. Road (East 60 ft wd. R.O.W.); thence N00°00'00"E 149.99 feet along said East 60 ft R.O.W. line of John R. Road (East 60 ft wd. R.O.W.); thence S87°36'24"W 60.05 feet to the West line of Section 24 and centerline of John R. Road (East 60 ft wd. R.O.W.); thence N00°00'00"E 348.00 feet along said West line of Section 24 and centerline of John R. Road (East 60 ft wd. R.O.W.); thence N87°36'06"E 1326.16 feet to the 1/8 line of Section 24; thence S00°01'42"W 1377.16 feet along said 1/8 line of Section 24 to the North R.O.W. line of School Road (North 43 ft wd. R.O.W.); thence N87°37'27"W 555.59 feet along said North R.O.W. line of School Road (North 43 ft wd. R.O.W.) to the Point of Beginning.

Subject to the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes