

VILLAS AT SHADOW PINES

PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (together with its Exhibits, the "Agreement") is made as of _____, 2014, by and between Shadow Pines, LLC, a Michigan limited liability company (the "Developer"), whose address is 14955 Technology Drive, Shelby Township, MI 48315, 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 9.8 acres of property located north of South Boulevard and west of Coolidge Road 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 Villas at Shadow Pines.

B. The preliminary PUD concept plans were approved by the City of Rochester Hills on July 29, 2013. The Property is currently zoned R-4, One Family Residential.

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

D. The PUD for the Property is to be known as "Villas at Shadow Pines" and is proposed to consist of the development of a residential family project consisting of 14 duplex residential buildings, for a total of 28 residential units, with a minimum living area of 1,712 square feet for Unit A Model, and 1,756 square feet for Unit B Model (the "Units"), as shown on the Final PUD Plans (defined below), together with a natural area of wetlands and open space, for the use and enjoyment of the residents of the development ("Project").

E. 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.

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. The Developer and the City believe that the development of the Project will provide affordable, high quality attached residential family Units that will be mutually beneficial to the City, the Developer and the residents of the City by providing a needed type of housing for residents of the City.

H. 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 attached multi-family 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 a particular group of citizens of the City, specifically empty nesters, senior citizens, young professionals and single parent households, who will be ideal prospective buyers of the 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; and
- (vii) enhancing and/or preserving existing wetlands within the Project.

I. The Rochester Hills Planning Commission (the "Planning Commission") reviewed and recommended to the City Council approval of the PUD Plans and has found the Final PUD Plans to be generally acceptable, subject to final review and approval as required under the City ordinances.

J. The Planning Commission, after giving proper notice, held a public hearing on March 18, 2014, and at its meeting of _____, 2014, the Final PUD Plans were considered and comments and recommendations of the public were received and heard.

K. The Rochester Hills City Council (the "City Council") at a meeting duly held on _____, 2014, adopted a Resolution approving this Agreement and the Final PUD Plans.

L. 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.

M. 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 R-4, One Family Residential, pursuant to Section 138-4.200 et seq. of the 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 single-family Units to be developed as part of the Project.

b. The City grants approval of the Project generally in accordance with the Final PUD Plans, comprised of no more than 28 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. 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 parties further acknowledge that the buildings and improvements as shown on the Final PUD Plans may be constructed, if at all, at different dates in the future, and that the 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 multiple phases, as shown on the Final PUD Plans. Provided that the Developer is proceeding in good faith and with due diligence 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 any time periods for Project completion for a reasonable time to enable the Developer to complete the Project. The Developer shall provide City Staff with a written report of the status of the development of the Project on an annual basis commencing one year from the date of this Agreement until project development is completed.

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. 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 be a residential family project, consisting of 14 buildings, each containing 2 attached residential units, for a total of 28 Units.

b. Exterior elevations of the buildings shall be in substantial conformance with the elevations included as part of the Final PUD Plans and the Colored 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. The Developer acknowledges that the roads do not meet public road standards and may not be dedicated to the public unless they are first brought into compliance with public road standards by the Developer or the subsequent owner(s) of the Project.

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

e. The minimum setbacks along South Boulevard, and 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 Villas at Shadow Pines will be installed in compliance with applicable City Codes and maintained by the Developer or its successors and assigns. The Developer shall have the right, but not the obligation, to erect an identification sign near the South Boulevard Road entrance on the Final PUD Plans, as permitted by applicable City Codes.

g. 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.

7. Dedication of Road Right of Way. Prior to any land improvement permits being issued for the Project, the Developer shall dedicate and convey to the City a right of way along the north side of South Boulevard which fronts the Property, as shown on the Final PUD Plans.

8. Pathway Extension. An eight foot (8') wide existing asphalt pathway shall be relocated by the Developer, at its expense, as shown on the Final PUD Plans

9. 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.

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

11. Wetland, Natural Features Setback and Storm Drainage Requirements.

a. Wetlands. The Developer shall comply with all applicable requirements of the City Code of Ordinances and of the Michigan Department of Environmental Quality ("MDEQ") relating to wetlands and securing necessary permits for the Project, and the City agrees to diligently process and review such application in good faith.

b. Natural Features Setback. The parties acknowledge that there are state and city regulated wetland areas on the Property adjacent to the detention basin proposed. Upon completion of the development and construction activities, the Developer shall restore such natural features setbacks to substantially the same condition that existed prior to any activity by the 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 with the Final PUD Plans, are not likely to endanger or materially and adversely affect any natural features adjacent to such setbacks.

c. Storm Water/Retention System. The Developer agrees to construct the storm water detention/retention system in the location approved by the City in accordance with City requirements. The Developer or its successors and assigns shall maintain the storm water detention/retention system in compliance with applicable standards. The 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. In the event the storm drain in the Project require repair in the future, it will be the responsibility of the Developer or its successors and assigns to remove and restore the trees and other landscaping within any required buffers as shown on the Final PUD Plans if such trees and other landscaping are damaged in connection with the repair of the storm drains.

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

12. 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.

13. Zoning Ordinance Requirements. The height, bulk, density and area requirements of the Project shall be as shown on the Final PUD Plans, and if not on the Final PUD Plans shall be as set forth in the current Zoning Ordinance. 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 use 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.

14. Minor/Major 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 ten percent (10%) 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; 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 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. Proposed modifications of a major material nature must be reviewed by the Planning Commission and approved by the City Council in accordance with the procedures applicable to final approval of the PUD.

15. 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 the Developer shall comply with all application fire department, engineering and floodplain rules, regulations and design standards of the City, except as modified herein, 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. However, 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 (herein "extension period"). If the site plan has not been submitted and approved within the time period prescribed above, including any extension period, then the right of the Developer to develop the Project under the PUD Plans may be terminated. 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.

16. 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 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

26. 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.

27. Limitation of City's Liability. This PUD is a private undertaking, and the parties understand and agree that: (a) this PUD is a 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 Plans; (c) the Developer shall have full and exclusive control of the Property subject to the limitations and obligations of the Developer under this Agreement; and (d) the contractual relationship between the City and the Developer is such that the Developer is an independent contractor and not an agent, partner or joint venture of or with the City.

28. Binding Effect. This Agreement shall become effective upon execution by all parties and when 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. 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 or the City Administration or its departments may change, but the City shall nonetheless remain bound by this Agreement.

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

DEVELOPER:

SHADOW PINES LLC, a

Michigan limited liability company

By: _____
Its: Managing Member

State of Michigan)
)
County of Macomb)

The foregoing was acknowledged before me on _____, 2014, by _____, Managing Member of Shadow Pines LLC, a Michigan limited liability company, on behalf of the company.

_____, Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

(Signatures continued on following page)

CITY:

CITY OF ROCHESTER HILLS, a Michigan
municipal corporation

By: _____

Its: _____

State of Michigan)

)

County of Oakland)

The foregoing was acknowledged before me on _____, 2014, 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:

Kalas Kadian, P.L.C.
Tom Kalas, Esq.
31350 Telegraph Rd., Ste. 200
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When Recorded Return to:
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

EXHIBIT A

Legal Description of Property

EXHIBIT B
Final PUD Plans

EXHIBIT C

Color Rendering of Sample Building Elevation