

PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (“PUD Agreement”) is made this ___ day of _____, 2006 by _____, LLC., a Michigan limited liability company (“Developer”) the address of which is: 4036 Telegraph Road, Suite 201, Bloomfield Hills, Michigan 48302, and the **CITY OF YPSILANTI**, a Michigan municipal corporation, (the “City”), the address of which is : 1 South Huron Street, Ypsilanti, Michigan 48197.

RECITALS:

- A. Developer owns certain real estate situated in the City of Ypsilanti, Washtenaw County, Michigan, more particularly described on Exhibit A attached hereto (“Parcel A”).
- B. Developer shall develop Parcel A for a planned unit development (PUD) for use as a drug store.
- E. Developer has applied to the City to establish a planned unit development known as Rite Aid Drug Store Ypsilanti Michigan Store # 4364 (“PUD”), within which Parcel A will be developed.
- F. Pursuant to a duly called meeting of the City Council, the City has determined that it is in furtherance of the City’s interests to permit Developer to develop the Property as a PUD.
- G. By entering into this PUD Agreement, Developer and the City desire to set forth the parties’ obligations with respect to the PUD and the conditions under which the City will grant Final PUD Site Plan approval. The City is willing to establish the Property as a PUD and Developer is willing to develop and maintain the PUD, subject to the terms and conditions of this PUD Agreement.

NOW, THEREFORE, Developer and the City hereby declare and agree that Parcel A shall be, held, transferred, sold, conveyed and occupied subject to the covenants, conditions, easements, restrictions, grants and reservations set forth herein; all of which are for the benefit of and shall run with and bind the Parcel and all parties having any right, title or interest in all or any portion of the Parcel, as well as their heirs, successors and assigns.

ARTICLE I DEFINITIONS

- 1.1 1.1 “Owner” shall mean the holder or holders of record fee simple title to any

- portion of the Property whether one or more Persons. The term “Owner” shall include any ground lessee to all or any portion of a Parcel. The term “Owner” shall not include any mortgagee or any other Person having an interest in a Parcel merely as security for the performance of an obligation, unless and until such mortgagee or Person shall have acquired fee simple title to such Parcel by foreclosure or other proceeding or conveyance in lieu of foreclosure. If more than one Person owns fee simple title to a Parcel, then the interests of all such Persons shall collectively be that of one Owner.
- 1.2 “Person” shall mean any individual, trust, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity, collectively.
- 1.3 “Property” shall mean Parcel A.
- 1.4 “PUD Plan” shall mean the Final PUD Site Plan and related plans and specifications approved by and on file with the Cit.
- 1.5 “PUD Conditions” shall mean the conditions established and required by the City Council in connection with its approval of the PUD Plan and rezoning.
- 1.6 “Storm Drainage and Detention Facilities” shall mean the storm drainage facilities located within a portion of Parcel A, as shown on the PUD Plan, which accommodate storm drainage from the Property.

ARTICLE II ESTABLISHMENT OF PUD, USE APPROVALS AND PUD PLANS

- 2.1.1 Establishment of the PUD and Approved Uses. The Property has been established as a Planned Unit Development under the City Zoning Ordinance.
- 2.2 Approved Final PUD Plan. The PUD Plan consists of the individual plans submitted by the Developer.
- 2.3 The City has approved the PUD Plan as a Final PUD Site Plan under the City Zoning Ordinance. To the extent not already included in the PUD Plan, Developer will take the following actions: None.
- 2.4 Adherence to Plans. The Property shall be developed in conformance with the PUD Plan, and all future Owner(s) shall be bound by the terms of this Agreement and Developer’s authority and responsibility as stated herein.
- 2.5 Adherence to Ordinances. Except as otherwise provided herein, Developer and Owner shall adhere to existing ordinances of the City in effect on the date of this PUD Agreement. To the extent that developing the Property in accordance with the PUD Plan will deviate from the City Zoning Ordinance, the City shall be deemed to have granted variances for all such deviations, including, but not limited to, the deviations set forth on the PUD Plan. All improvements constructed in accordance with this PUD Agreement and the PUD Plan shall be deemed to be conforming under the City Zoning Ordinance, and in compliance with all ordinances of the City.
- 2.6 Permits and Authorizations. The City shall grant to Developer and its contractors and subcontractors all City permits and authorizations necessary to bring all utilities, including, without limitation, electricity, telephone, gas, cable television, water, storm and sanitary sewer to the Property and to otherwise develop and

- improve the Property in accordance with the PUD Plan, provided that Developer has made all requisite filings and submissions and paid all requisite fees. The City shall not unreasonably delay providing or issuing permits, authorizations and submissions required in connection with the development and use of the Property in accordance with this PUD Agreement. The City shall cooperate with Developer in connection with Developer's applications for any necessary county, state, federal or utility company approvals, permits or authorizations, to the extent that such applications are consistent with the PUD Plan and this PUD Agreement.
- 2.7 Conflict. If any provision of this PUD Agreement conflicts with any provisions of the City Zoning Ordinance, or any amendment thereto, or any other ordinance, resolution, rule or regulation of the City which are currently in effect or which may be adopted in the future, the provisions of this PUD Agreement shall control and the provision of the City Zoning Ordinance, or any amendment thereto, or other ordinance, resolution, rule or regulation shall be inapplicable to the extent of the inconsistency.
- 2.8 Timing and Phasing of Development. The timing and phasing of the PUD shall be in accordance with the Phasing Plan that is part of the PUD Plan (the "Phasing Plan"). Provided such development is in accordance with the Phasing Plan, the development and installation of improvements within a Parcel may commence, provided that engineering plans for such Parcel have been approved by the City's engineer and the required permits for the proposed improvements have been obtained.

ARTICLE III COMPLETION OF IMPROVEMENTS

- 3.1 Completion of Improvements. All improvements shown on the PUD plan shall be completed pursuant to the provisions of the PUD plan and the Phasing Plan.

ARTICLE IV MISCELLANEOUS

- 4.1 Binding Effect. This PUD Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. The rights and obligations contained in this PUD Agreement shall run with the Property.
- 4.2 Authority. This PUD Agreement has been duly authorized by all necessary action of Developer and the City, through the approval of the City Council at a meeting in accordance with the laws of the State of Michigan and the ordinances of the City. By the execution of this PUD Agreement, the parties each warrant that they have the authority to execute this PUD Agreement and bind the Property and their respective entities to its terms and conditions.
- 4.3 Amendment. This PUD Agreement shall only be amended pursuant to an instrument executed by the City and Developer or their successors in title. No consent to the amendment of this PUD Agreement shall be required of any other Person, including mortgagees.
- 4.4 Captions. The captions preceding the text of each Article, section and subsection are included only for convenience of reference. Captions shall be disregarded in

- the construction and interpretation of this PUD Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this PUD Agreement.
- 4.5 Partial Validity. Invalidation of any of the provisions contained in this PUD Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof of the application thereof to any other person and the same shall remain in full force and effect.
- 4.6 No Partnership. None of the terms or provisions of this PUD Agreement shall be deemed to create a partnership or joint venture between Developer and the City.
- 4.7 Not a Public Dedication. Except as expressly provided herein, nothing contained herein shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions of this PUD Agreement.
- 4.8 Time. Time is of the essence to this PUD Agreement.
- 4.9 No Waiver. The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies that such party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default under this PUD Agreement. No waiver by either party of any default under this PUD Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by the a party to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this PUD Agreement shall not be deemed to be waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this PUD Agreement.
- 4.10 Notices. All notices permitted or required to be given shall be in writing and send either by mail or by personal delivery to the address first given above.
- 4.11 Recording. The obligations under this agreement are covenants that run with the land and shall bind all successors in title. This agreement shall be recorded in the records of the Washtenaw County Register of Deeds by Developer and at the cost of Developer.
- 4.12 Governing Law. This agreement shall be governed by Michigan law and all jurisdiction and venue shall reside in Washtenaw County, Michigan.

IN WITNESS WHEREOF, the undersigned have executed this PUD Agreement effective as of the day and year first written above.

DEVELOPER:

RAC Ypsilanti,L.L.C.
a Michigan limited liability company

Ypsilanti, MI 458197