

PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (“**PUD Agreement**”) is made effective as of the 25th day of February, 2005, between the **CITY OF EAST GRAND RAPIDS**, a Michigan municipal corporation, of 750 Lakeside Drive, SE, East Grand Rapids, Michigan 49506 (the “**City**”) and **JADE PIG VENTURES - EGR, LLC**, a Michigan limited liability company (“**JPV - EGR**”), and **JADE PIG VENTURES - RAMONA, LLC**, a Michigan limited liability company (“**JPV - Ramona**”), each of 444 Michigan NE, Grand Rapids, Michigan 49503 (JPV - EGR and JPV - Ramona sometimes being collectively referred to as “**Developer**” or “**Jade Pig Ventures**”).

Background:

A. Jade Pig Ventures owns real estate in the City of East Grand Rapids, Kent County, Michigan, of approximately 8.5 acres in size and described on the attached **Exhibit A** (the “**Property**”).

B. Jade Pig Ventures intends to develop the Property for retail, service, office, professional office, residential and other purposes shown on the site plan that is part of the attached **Exhibit B**.

C. Developer and the City have agreed to establish the Property as a mixed use planned unit development (“**PUD**”). The City Commission has determined that the City’s interests are best served by the Property being developed as the PUD, for at least the following reasons:

(1) The PUD Plan (defined below) is a mixed-use development on a large, centrally located site in the City, which will provide desirable living, shopping and working environments.

(2) The PUD Plan is consistent with the City’s Master Plan, which targets the Property for mixed use in transition from adjacent single use properties.

(3) The PUD Plan effectively transitions from the City’s most prominent physical attribute, Reeds Lake, through attractive transitional changes in densities, elevations and uses from the Reeds Lake frontage recreational parcels with maximum open spaces to the low-rise single use conventional multi-family parcels west of Lakeside Drive to the high-rise multiple uses of the Property.

(4) The Property’s substantial frontage along the City’s two main streets, Wealthy Street and Lakeside Drive, allows a number of alternate access routes that will minimize traffic congestion by providing an efficient dispersal of traffic flow from the Property onto city streets.

(5) The Property’s substantial size and configuration allows an efficient arrangement and use of buildings, concentrated on-site interior (including subsurface residential) parking, efficient circulation systems, and mixed uses.

(6) The substantial investment required by the PUD Plan ensures first class development commensurate with the Property's prominent location in the City and the Property's view of Reed's Lake from the above grade floors of the buildings on the Property provides crucial support for that substantial investment.

D. By this PUD Agreement, Developer and the City establish the parties' obligations with respect to the PUD. The City is willing to establish the Property as the PUD and Developer is willing to develop the property in accordance with this PUD Agreement and the PUD Plan.

AGREEMENT

Therefore, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 "Condominiums" mean the proposed residential condominium project(s) to be constructed on the Property.

1.2 "Condominium Association" mean the association(s) established under the Condominium master deed(s) to administer the Condominium Owners' affairs.

1.3 "Owners" mean the current and future titleholder(s) to any of the Property.

1.4 "Person" means any individual or any personal, business or governmental entity.

1.5 "PUD Plan" means the attached **Exhibit B** together with all Site Plans and related plans and specifications from time to time approved by and on file with the City as described on the attached **Exhibit B**.

1.6 "Site Plan" means a site plan relating to part of the Property and approved as part of the PUD Plan.

1.7 The following additional terms are defined where indicated below:

City	Introduction
JPV-Ramona	Introduction
JPV-EGR	Introduction
Landscaping Plan	5.2
Major Change	6.2
Master Deed	3.1
Minor Change	6.3
Phasing Plan	2.5
Property	Background A
PUD	Background B

ARTICLE 2
ESTABLISHMENT OF PUD, USES AND APPROVALS

2.1 PUD Establishment; Approved Uses. The City has approved the Property as a Planned Unit Development under the City Zoning Ordinance. The Property shall be used for retail, service, office, professional office, residential, parking, common area and such other uses as allowed under the PUD Plan. The Property shall contain the buildings and other structures shown on the PUD Plan.

2.2 Plan, Laws and Ordinances. The Property shall be developed and operated in conformance with, and all Owners shall be bound by, the PUD Plan and this PUD Agreement and, except as otherwise provided in the PUD Plan or this PUD Agreement, with all City and state ordinances, laws and regulations and all approvals from applicable governmental entities.

2.3 Permits and Authorizations. The City shall grant Developer all City permits and authorizations needed to install Property utilities (including electricity, telephone, gas, cable television, water, and storm and sanitary sewer) and to otherwise develop the Property in accordance with the PUD Plan and this PUD Agreement, provided Developer makes all required applications, requests and submissions. The City shall not unreasonably delay granting such permits and authorizations. The City shall cooperate with Developer in its application for any necessary county, state, and utility company approvals, permits and authorizations, to the extent consistent with the PUD Plan and this PUD Agreement.

2.4 Conflict. Any conflict between this PUD Agreement (including the PUD Plan) and any existing or future provision of the City Zoning Ordinance or any other City ordinance, resolution, or regulation, shall be controlled by this PUD Agreement (with the conflicting provision of the City Zoning Ordinance or other City ordinance, resolution, or regulation to not apply to the extent of the inconsistency).

2.5 Phasing. Developer may develop the Property in phases as described in the PUD Plan (the "**Phasing Plan**"). Provided the Phasing Plan is not violated, each Parcel's development may proceed independently. Developer shall submit for review and approval of the City Planning Commission and City Commission a supplementary Site Plan for each phase, which shall be approved if consistent with the PUD Plan. Upon such approval, each final Site Plan shall become part of the PUD Plan.

ARTICLE 3
CONDOMINIUM DEVELOPMENT

3.1 Establishment. In accordance with the PUD Plan, the Condominiums constructed on the Property shall contain not more than one hundred seven (107) residential units, to be established under one or more master deeds (with related bylaws and condominium subdivision plans being the "**Master Deed**") in accordance with state laws. The Master Deed shall require that the Condominiums Owners be bound by this PUD Agreement. Developer shall record the Master Deed with the Office of the Kent County Register of Deeds for each separate Condominium development prior to commencing construction of the condominium units in that development. Prior to such recording, the Master Deed shall be submitted to the City Attorney

for review and approval as to its compliance with this PUD Agreement. Developer may amend the Master Deed without the City's consent, for the purpose of expanding the Condominiums as allowed by this PUD Agreement and for such other lawful purposes which are not inconsistent with the PUD Plan or this PUD Agreement.

3.2 Legal Requirements. Developer shall be solely responsible for complying with the Michigan Condominium Act and, to the extent not inconsistent with the PUD Plan or this PUD Agreement, all City ordinances related to the Condominiums until such time as an applicable Condominium Association assumes such responsibility in compliance with state laws.

3.3 Common Areas and Maintenance. Any Condominium open spaces shall be dedicated for the common use of the Condominium Owners. To ensure the long-term maintenance of these areas, Developer shall establish a Condominium Association in accordance with state law with the responsibility to maintain, repair and replace such areas.

ARTICLE 4 **PUBLIC IMPROVEMENTS AND EASEMENTS**

4.1 Public Improvements. Developer shall not be responsible to perform (or make any special contributions or other payments towards) the construction, maintenance, repair or replacement of any on site or off site public improvements except Developer shall install in accordance with the PUD Plan all of the above surface improvements and the surface materials (including landscaping) in the public rights of way adjacent to the Property from the inside of the street curb extending to property line of the Property but after such installation shall have no responsibility for such improvements other than those responsibilities required generally of adjacent property owners under City ordinances.

4.2 Easements and Dedication. None of the existing easements in the Property shall be affected by this PUD Agreement or the PUD Plan. Developer shall not be required to grant any easements in the Property or dedicate the use of or title to any property to the City.

ARTICLE 5 **COMPLETION OF IMPROVEMENTS**

5.1 Completion of Improvements. All improvements shown on the PUD Plan shall be completed unless the parties otherwise agree in writing.

5.2 Landscaping. Developer shall complete the Property's landscaping in accordance with the landscaping plan approved by the City's Planning Commission as part of its final Site Plan approval (the "**Landscaping Plan**"). The Master Deed shall include provisions for the maintenance, repair and replacement of all common landscaped areas shown on the Landscaping Plan (including, without limitation, mowing turf, trimming trees and shrubs, watering all landscaped areas, and removing and replanting all diseased or dead plants).

5.3 Curb Cuts. No curb cuts from the Property onto Wealthy Street, Lakeside Drive or Shopping Center Road shall be permitted except as shown on the PUD Plan.

ARTICLE 6
AMENDMENTS TO PUD PLAN

6.1 Major Changes. Each Major Change (defined below) to the PUD Plan shall require City Commission approval. Any approved Major Change shall be identified in a separate amendment to this PUD Agreement (and recorded with the Office of the Kent County Register of Deeds) and noted on the PUD Plan (which notation shall be signed by the Mayor of the City with the date of approval).

6.2 Minor Changes. Each Minor Change (defined below) to the PUD Plan shall require only the City's Zoning Administrator's approval. Any approved Minor Change shall be noted on the PUD Plan (which notation shall be signed by the City Zoning Administrator with the date of approval).

6.3 Changes Defined. The City's Manager shall determine whether a change is a Minor Change and in so doing shall, where applicable, use the below guidelines. Any change not a Minor Change shall be a "**Major Change.**" A "**Minor Change**" shall consist of the following:

- (A) Increasing any building size that, in combination with previous increases, does not exceed five percent (5%) of the originally approved total floor area for that building;
- (B) Moving any building exterior wall or other structure by no more than three (3) feet;
- (C) Replacing plant material specified in the Landscaping Plan with comparable materials;
- (D) Any change required or requested by the City or another governmental agency in order to conform applicable laws or regulations;
- (E) Decreasing building size; and
- (F) Any other change determined pursuant to the City Code to be a Minor Change.

ARTICLE 7
VIOLATIONS

The parties acknowledge that monetary damages for a breach of this PUD Agreement would be inadequate to compensate the non-breaching party for the benefit of its bargain. Accordingly, the parties agree that, upon any violation of this PUD Agreement, the non-breaching party shall be entitled to specific performance. However, should Developer violate this PUD Agreement, the City shall first give Developer written notice describing the default and demanding a cure within a stated reasonable time period (not less than forty-five (45) days, weather permitting) and setting the date, time and place of a City Planning Commission hearing at which Developer may be heard regarding whether this PUD Agreement has been violated and,

if so, whether Developer has failed to cure the violation. At the hearing, the City Planning Commission may extend the time for curing the violation and setting another such hearing in the future. If the City Planning Commission at such a hearing determines that the violation exists and has not been cured, then Developer shall immediately cease development of the Property pending full compliance with this PUD Agreement and Developer's right to continue such development shall be reinstated only when the violation is cured (or Developer provides security for its performance which is acceptable to the City). In any litigation to enforce this PUD Agreement, the prevailing party shall receive its costs and reasonable attorney and consulting fees incurred.

ARTICLE 8 **MISCELLANEOUS**

8.1 Binding Effect. This PUD Agreement shall bind and inure to the benefit of the parties and their successors and assigns. The rights and obligations in this PUD Agreement shall run with the Property.

8.2 Authority. This PUD Agreement has been duly authorized by all necessary action of Developer and of the City (through City Commission approval at a duly called meeting and in accordance with state laws and City ordinances). By executing this PUD Agreement, the parties each warrant that they have the authority to execute and to bind the Property and themselves to this PUD Agreement.

8.3 Amendment. This PUD Agreement shall be amended only by a written amendment executed by the City and Developer (or its successors in title). No consent to such an amendment shall be required of any other Person, including the Property's mortgagees.

8.4 Captions; Terms. The captions of each Article and section are for convenience of reference only and shall be disregarded in interpreting this PUD Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily relate to the meaning they otherwise have outside of this PUD Agreement.

8.5 Partial Validity. If any provision of this PUD Agreement or its application to any person shall be invalid, such shall not affect any other provision or application to any other person, all of which shall remain in full force and effect.

8.6 No Partnership. This PUD Agreement shall be deemed to create a partnership or joint venture between Developer and the City.

8.7 Not a Public Dedication. Nothing in this PUD Agreement shall be deemed a gift or dedication of any part of or interest in the Property to the general public or for any public use or purpose. No rights shall inure or obligations be owed under this PUD Agreement to any third party nor shall any third party be deemed a beneficiary of any of its provisions.

8.8 Waiver. A party's failure to insist upon strict performance of any term of this PUD Agreement shall not waive any rights or remedies of that party nor be deemed a waiver of any later breach. No default waiver under this PUD Agreement shall bind a party unless in

writing and no such waiver shall be implied from any failure to take action with respect to the default. No waiver of a default shall affect any other default or the same default at another time other than as specified in the written waiver.

THEREFORE, the undersigned executed this PUD Agreement effective as of the date first written on page one.

DEVELOPER: **JADE PIG VENTURES - EGR, L.L.C.**, a Michigan limited liability company

By 
Scott D. Wierda, Manager

JADE PIG VENTURES - RAMONA, L.L.C., a Michigan limited liability company

By 
Scott D. Wierda, Manager

CITY: **CITY OF EAST GRAND RAPIDS**, a Michigan municipal corporation

By 
Cindy C. Bartman
Its Mayor

And by 
Karen K. Brewer
Its Clerk

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STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

This PUD Agreement was acknowledged before me on the ___ day of July, 2008, by Scott D. Wierda, as Manager of Jade Pig Ventures - EGR, L.L.C., a Michigan limited liability company, and as Manager of Jade Pig Ventures - Ramona, L.L.C., a Michigan limited liability company, on behalf of each such limited liability company.

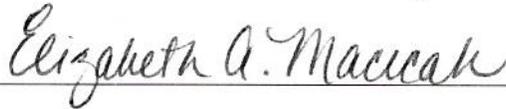
SHERYL ANN WILLIS
Notary Public, State of Michigan
County of Ottawa
My Commission Expires Jan. 29, 2013
Acting in the County of Kent



Notary Public, Kent County, Michigan
Acting in Kent County
My commission expires: 01-29-2013

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

This PUD Agreement was acknowledged before me on 13th day of ^{Aug.}~~July~~, 2008, by Cindy C. Bartman and Karen K. Brower, the Mayor and Clerk, respectively, of the City of East Grand Rapids, a Michigan municipal corporation, on behalf of such corporation.



Notary Public, Kent County, Michigan
Acting in Kent County
My commission expires: 4-9-2013

Exhibit A – Property Legal Description
Exhibit B - PUD Plan

00200 (086) 235035.02

ELIZABETH A. MACICAK
NOTARY PUBLIC, ALLEGAN COUNTY, MICHIGAN
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES 4/9/2013

**AMENDMENT TO
PLANNED UNIT DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO PLANNED UNIT DEVELOPMENT AGREEMENT ("**Amendment**") is made this 7th day of July, 2008, between the **CITY OF EAST GRAND RAPIDS**, a Michigan municipal corporation, of 750 Lakeside Drive SE, East Grand Rapids, Michigan 49506 (the "**City**") and **JADE PIG VENTURES – EGR, L.L.C.**, and **JADE PIG VENTURES – RAMONA, L.L.C.**, each a Michigan limited liability company, of 444 Michigan NE, Grand Rapids, Michigan 49503 (collectively, "**Jade Pig Ventures**"), to amend the Planned Unit Development Agreement ("**PUD Agreement**") between the parties dated February 25, 2005.

RECITALS

WHEREAS Jade Pig Ventures proposed an amendment to the Planned Unit Development approved by the City on October 18, 2004; and

WHEREAS the City approved a modification of the PUD site plan on February 4, 2008 to incorporate new site plan drawings for Phase 2 dated December 11, 2007; and

WHEREAS Section 6.1 of the PUD Agreement provides that any major change shall be identified in a separate amendment to the PUD Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. The PUD Agreement dated February 25, 2005 is hereby amended to incorporate new site plan drawings dated December 11, 2007, as approved by an amendment to the Jade Pig Ventures Planned Unit Development Ordinance dated February 15, 2008.

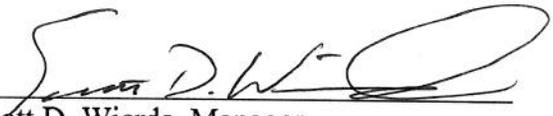
2. The PUD Agreement, as amended, remains in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Amendment to Planned Unit Development Agreement on the date first written above.

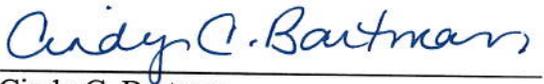
DEVELOPER: **JADE PIG VENTURES - EGR, L.L.C.**, a
Michigan limited liability company

By 
Scott D. Wierda, Manager

**JADE PIG VENTURES – RAMONA,
L.L.C., a Michigan limited liability company**

By 
Scott D. Wierda, Manager

**CITY: CITY OF EAST GRAND RAPIDS, a
Michigan municipal corporation**

By 
Cindy C. Bartman
Its Mayor

And by 
Karen K. Brower
Its Clerk

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STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

This PUD Agreement was acknowledged before me on the 31st day of July, 2008, by Scott D. Wierda, as Manager of Jade Pig Ventures - EGR, L.L.C., a Michigan limited liability company, and as Manager of Jade Pig Ventures - Ramona, L.L.C., a Michigan limited liability company, on behalf of each such limited liability company.

Joyce L. Finch
Joyce L. Finch
Notary Public, Kent County, Michigan
Acting in Kent County
My commission expires: 10-19-2011

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

This PUD Agreement was acknowledged before me on 13th day of ~~July~~ ^{Aug.}, 2008, by Cindy C. Bartman and Karen K. Brower, the Mayor and Clerk, respectively, of the City of East Grand Rapids, a Michigan municipal corporation, on behalf of such corporation.

Elizabeth A. Macicak
Elizabeth A. Macicak
Notary Public, Kent County, Michigan
Acting in Kent County
My commission expires: 4-9-2013

Exhibit A – Property Legal Description
Exhibit B - PUD Plan

00200 (086) 398687.1

ELIZABETH A. MACICAK
NOTARY PUBLIC, ALLEGAN COUNTY, MICHIGAN
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES 4/9/2013