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CONDITIONAL REZONING AGREEMENT

This CONDITIONAL REZONING AGREEMENT (“Agreement”) is made this ___ day of _____, 20__ between VANGUARD KINGSRIDGE LLC, a Michigan Limited Liability Company, whose address is 989 E. South Blvd, Ste 120, Rochester Hills, MI 48307 (“Owner”), and the CHARTER TOWNSHIP OF WASHINGTON, a Michigan Municipal Corporation, whose address is 57900 Van Dyke Road, Washington Township, Michigan 48094 (“Township”).

RECITALS

- A. Owner is the Owner of real property located in the Township of Washington, County of Macomb, State of Michigan, Parcels 04-35-105-006, 04-35-105-007 and 04-35-105-008, more particularly described on **Exhibit A** (collectively, “Subject Property”).
- B. The Subject Property is zoned Single Family Residential R1-B, (“R1-B”) and Single Family Residential R1-C (“R1-C”), as set forth in the Township Zoning Ordinance (“Zoning Ordinance”).
- C. Owner has requested that the Township conditionally rezone the Subject Property from its current zoning of R1-B and R1-C to Single Family Residential R1-D (“R1-D”).
- D. The Michigan Zoning Enabling Act (“MZEA”) and Washington Township Zoning Ordinance (“Zoning Ordinance”) allow for the rezoning of property, and the MZEA, at MCL 125.3405, provides that an owner of land may voluntarily offer in writing, and the Township may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map, conditioned upon the Township accepting certain rezoning conditions voluntarily offered by Owner.
- E. Owner submitted its Conditional Rezoning Application to the Township along with its site plans (“Plans”). The Plans are attached to this Agreement as **Exhibit B** and incorporated herein by reference.
- F. Owner proposes to Conditionally Re-Zone the Subject Property and develop both Parcels as a residential neighborhood, as shown in the Plans attached at **Exhibit B** (“Proposed Development”) and the Conditions Offered and Approved.

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- G. In submitting the application for rezoning, Owner has voluntarily offered in writing to condition the rezoning upon a specific site plan design and use.
- H. The Proposed Development shall consist of the use and the building design requirements of the R1-D zoning classification under the Zoning Ordinance, but which is not permitted under the current R1-B and R1-C zoning classifications of the Subject Property, as set forth in the attached Plans and accompanying documents, unless this Agreement is amended to allow different uses which are mutually agreeable between Owner and the Township.
- I. In order to permit the use under the Proposed Development, Owner has requested that Township rezone the Subject Property, conditioned upon Township accepting the Rezoning Conditions proposed by Owner. The Township is willing to accept the Rezoning Conditions proposed and allow Owner to develop and use the Subject Property with the Proposed Development.
- J. After giving proper notice, the Township Planning Commission held a public hearing on Owner's proposed rezoning of the Subject Property on December 8, 2022, as required by the Michigan Zoning Enabling Act, MCL 125.3101 et. seq. and Township Ordinance, and voted to recommend/submitted its recommendation to the Township Board for approval of Owner's request to rezone the Parcel and to accept the Owner's specifications set forth in this Agreement.
- K. On _____, 20__, the Township Board of Trustees voted to approve Owner's requested rezoning, accept Owner's proposed specifications, and approve the terms and conditions of this Agreement.
- L. Owner and the Township wish to set forth their understandings with respect to the Rezoning to facilitate the Proposed Development of the Subject Property.
- M. Therefore, in order to facilitate the Proposed Development of the Subject Property, Owner and the Township have agreed to rezone Subject Property from R1-B and R1-C to R1-D, under the terms and conditions set forth in this Agreement:

NOW THEREFORE, in consideration of the premises and rights reserved, herein, and in order to accomplish the forgoing purposes, the undersigned Owner and Township agree as follows:

- 1. Conditional Rezoning. Pursuant to MCL 125.3405, Township agrees to rezone and Owner agrees to develop the Subject Property as set forth in this Agreement. The Township will effectuate the rezoning of the Subject Property from R1-B and R1-C to R1-D and permit the Proposed Development of the Subject Property in conformance with the Rezoning Conditions set forth herein.

This Agreement shall not be binding upon either party, until, following a properly noticed public hearing on the conditional rezoning, as considered by the Township's legislative body,

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being the Board of Trustees, and the conditional rezoning request and this Agreement having been ratified and approved by the Board of Trustees.

2. New Zoning District. Upon the rezoning taking effect, the use and development of the Subject Property shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by the statement of conditions.
3. Voluntary Offer of Conditions / Zoning Objectives. This Agreement is the result of voluntary conditions offered by Owner and considered by the Township for the achievement of legitimate zoning objectives that are set forth in the Michigan Zoning Enabling Act and Macomb Township Zoning Ordinance. This Agreement arose out of an offer of conditions under MCL 125.3405.
4. Rezoning Conditions. The parties acknowledge and agree that the Subject Property has been granted Conditional Rezoning Approval by the Township and such approval is conditioned upon Owner's development and use of the Subject Property as provided for in this Agreement and as shown in the attached Plans in accordance with the following conditions which Owner proposed as a condition of the rezoning:
 - a. The subject property shall be developed and used as set forth in the Plans attached at **Exhibit B.**
 - b. Developer shall add a provision into the Bylaws of the Kingsridge Estates that references a specific area for tree protection, which shall not include a common area or easement, within which area Association approval would be required for any removal of trees.
 - c. The Proposed Development shall be consistent with accepted planning and zoning practices; the Subject Property shall not be developed in a manner that is inconsistent with the conditions placed on this conditional rezoning;
5. Issuance of Approval or Permits. No approvals or permits shall be granted for any use or development of the Subject Property that does not conform to this Agreement, including the Rezoning Conditions, except as permitted under the Township Zoning Ordinance.
6. Effective Date. The conditional rezoning approved by Township Board shall be effective upon the date of enactment by Township of an amendment to the Zoning Ordinance and Zoning Map, conditionally rezoning the Subject Property to R1-D, which rezoning shall be a conditional rezoning pursuant to MCL 125.3405, and subject to the terms and conditions set forth in this Agreement.
7. Amendments / Integration. This Agreement and its **Exhibits** set forth the entire agreement between the parties relative to development and use of the Subject Property and 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

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not contained in this Agreement shall be valid or binding. This Agreement, including the Statement of Conditions, may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement. Remedial amendments to correct errors and omissions, as well as minor technical changes to the development and plans, may be approved and executed by the parties, as long as they are consistent with the spirit and Intent of this Agreement and executed by both parties.

8. Binding Effect. This Agreement shall covenant and run with the Subject Property and bind and inure to the benefit of the parties, their heirs, successors and assigns. It is also understood that the members of the Township Planning Commission and Board and/or its departments may change, but the Township shall nonetheless remain bound by this Agreement.
9. Recording in Macomb County Records. The Agreement shall be recorded in the office of the Macomb County Register of Deeds and a certified copy of the recorded Agreement shall be delivered to the Township.
10. Counterparts. This Agreement and any future amendment to this Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original, and it shall not be necessary for the same counterpart to be signed by all signatories in order for this amendment or any amendment to this Agreement to be binding upon all of the parties. When counterparts have been executed by all parties, it shall have the same effect as if one original had been signed by all parties.
11. Severability. It is understood and agreed by the parties that if any part, term or provision of this Agreement is 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.
12. 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 breach or enforcement of this Agreement may be Instituted and maintained in any court of competent jurisdiction in the County of Macomb, State of Michigan.
13. Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
14. 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 Macomb 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 costs and reasonable 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/or equity.

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- 15. Inconsistency. To the extent that the Agreement and Plans conflict with the Township Ordinance requirements, the terms of this Agreement and Plans will control. Any clerical errors or mistakes in this Agreement 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. In all events any reference to the Township Ordinances shall mean existing Ordinances of Macomb Township at time of execution of this Agreement. No ordinances or regulations will be adopted, enacted, or enforced by the Township to nullify, negate, or diminish the rights of Owner as provided for in this Agreement and the Plans.
- 16. Authority. The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals or entities and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represent that the execution of this Agreement has been duly authorized and is binding on such party.

In Witness Whereof, the parties hereto have set their hands and seals as of the day and year first written above.

OWNER: VANGUARD KINGSRIDGE LLC
a Michigan Limited Liability Company

By:
Its:

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____, the _____ of Vanguard Kingsridge LLC, a Michigan Limited Liability Company.

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

TOWNSHIP:
CHARTER TOWNSHIP OF WASHINGTON,
a Michigan Municipal Corporation

By: _____
Sebastian Previti
Its: Supervisor

And

By: _____
Stan Babinski
Its: Clerk

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As approved at the Township Board of Trustees
Meeting held on _____, 20__.

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____
_____, as the _____ of and for the Township of Washington, a Michigan Municipal Corporation.

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____
_____, as the _____ of and for the Township of Washington, a Michigan Municipal Corporation.

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

Drafted by: Robert W. Kirk
Kirk, Huth, Lange & Badalamenti, PLC
19500 Hall Road, Suite 100
Macomb Township, MI 48038

When recorded return to: Stan Babinski, Clerk
Charter Twp. Of Washington
57900 Van Dyke Ave
Washington, MI 48094

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EXHIBIT A

Legal Description of the Subject Property

Situated in the Township of Washington, County of Macomb, State of Michigan, more particularly described as follows:

[Legal Descriptions to be Verified]

AMENDED PLAT OF LOTS 1,2,3,4,5,8,9, AND 10 AND THE VACATED PARTS OF NEWELL AVE, GERNT AVE, CLEBURNE AVE AND PURSELL AVE OF NEWELL'S GARDEN ACRES (L156, P 47-49)
LOT 25

AMENDED PLAT OF LOTS 1,2,3,4,5,8,9, AND 10 AND THE VACATED PARTS OF NEWELL AVE, GERNT AVE, CLEBURNE AVE AND PURSELL AVE OF NEWELL'S GARDEN ACRES (L156, P 47-49)
LOT 24

AMENDED PLAT OF LOTS 1,2,3,4,5,8,9, AND 10 AND THE VACATED PARTS OF NEWELL AVE, GERNT AVE, CLEBURNE AVE AND PURSELL AVE OF NEWELL'S GARDEN ACRES (L156, P 47-49)
LOT 26

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EXHIBIT B

Development Plans for the Project

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