

**CITY OF SOUTHFIELD OVERLAY DEVELOPMENT DISTRICT (ODD)
REVIEW CHECKLIST**

The Overlay Development District (ODD) modifies the traditional form of zoning and permits variety in design, site configuration, setbacks, layout, use, and encourages efficiency in use of land and natural resources, while ensuring compatibility with surrounding land uses.

In return for greater flexibility in site design requirements, ODDs are expected to deliver exceptional quality community designs that provide above-average pedestrian amenities, incorporate creative design in the layout of buildings, focus on pedestrian space and circulation; incorporate public art; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure.

Per Ordinance #1603, the application to rezone shall include the following information and documents:

- a. *Ownership.* The application form must be signed by the applicant, and authorized by all owners of any land to be included within the ODD and include the address telephone number and e-mail address of all applicants.
- b. *Qualification.* The application shall include a narrative statement describing the overall objectives of the proposed ODD; demonstrate that the proposed site meets the qualifying conditions for an ODD rezoning; and explain why the property may not be developed as currently zoned.
- c. *Development impact.* The application shall include a development impact statement addressing impact of the proposed development on:
 - i. Surrounding land uses.
 - ii. Pedestrian and vehicular Traffic.
 - iii. Preservation of natural or historic features.
 - iv. Public utilities.
 - i. Public services.
 - ii. Economic impact.
 - iii. Special design features (e.g. Low Impact Design, Architectural features, etc.)
 - iv. Pervious surfaces
- d. *Master Development Plan (MDP).* The application shall include a proposed master development plan encompassing all phases of the proposed ODD, containing all information required by the Planning Commission and City Council and prepared at an acceptable scale.

- e. *Development Agreement.* The application shall include a proposed development Agreement (*see City template*) which shall include specific standards tailored to the ODD and use of the property in conjunction with the rezoning. The provisions contained in the Agreement shall, upon approval and execution, be binding upon both parties. The Agreement shall be in a form recordable with the Oakland County Register of Deeds, or in the alternative, be accompanied by a recordable memorandum prepared and signed by the property owner(s) giving notice of the ODD development agreement in a manner acceptable to the City Attorney.
- f. *Site Plan.* Site plan drawings including proposed site elevation contours; Typical elevation drawings, with identification of facade materials of all sides of each principal building included in the ODD, drawn at a scale of one (1) inch equal to one hundred (100) feet or other scale acceptable to the Planning Director.
- g. *Environmental Assessment.* An affidavit from a qualified environmental engineer that an environmental assessment has been performed and the results indicate that there is nothing to preclude the development as proposed.
- h. *Fee.* An application to rezone land in the ODD shall be accompanied by a fee established from time to time by the City Council.

Please use the checklist/guide below to describe how these Agreement requirements will be achieved:

1. Architectural Design & Building Elements	
2. Art	
3. Dimensional Requirements	
Required Lot Area:	Zoning:
Minimum Lot Width:	Minimum Size (Acres):
Front Yard Setback:	Maximum Height (Ft/Stories):
Rear Yard Setback:	Side Yard Setbacks:
Maximum Lot Coverage:	Minimum Floor Area:

4. Easements
5. Engineering & Utilities
a) Sanitary Sewer:
b) Storm Water:
c) Water Service:
6. Environmental Assessment
a) Wetland Impact:
b) Woodland Impact:
c) Preservation of Natural Features, if applicable:
d) Tree Replacement Plan:
7. Hours of Operation
8. Landscaping
a) Building Foundation:
b) Parking Lot:
c) Perimeter:
9. Lighting
10. Low Impact Design

11. Misc. Conditions
12. Non-Motorized Transit, Pathways & Sidewalks
13. Parking & Circulation
a) Cross Access: b) Ingress/Egress: c) R.O.W. Dedication, if applicable: d) Spaces Required: e) Street Vacation, if applicable: f) Traffic Impacts:
14. Phasing Plan
15. Residential Improvements, if applicable
16. Screening, including ornamental fencing, walls and buffers
17. Streetscape Elements

18. Urban Open Space
19. Uses, Permitted

OVERLAY DEVELOPMENT DISTRICT DEVELOPMENT AGREEMENT

THIS OVERLAY DEVELOPMENT DISTRICT DEVELOPMENT AGREEMENT (the “Agreement”) is made effective as of this _____ day of _____, 2013, by and between the **CITY OF SOUTHFIELD, a Michigan municipal corporation** (sometimes referred to as “Southfield” or the “City”), with offices located at 26000 Evergreen Road, P.O. Box 2055, Southfield, Michigan, 48037-2055; [Insert Project Name], **a Michigan Corporation** (“_____”), with offices located at _____; _____ **a Michigan limited liability company** (“_____”), whose address is _____; and _____, **a Michigan non-profit**.

WITNESSETH:

WHEREAS, Section 5.22-3 of the Zoning Ordinance of the City (the Zoning Ordinance) allows for an Overlay Development District (ODD) zoning classification as an optional method of development. The purpose of the Overlay Development District (ODD) is to encourage development of those parcels of land which, because of their size; their location being uniquely situated with regard to (higher density) adjoining uses; or their unique environmental features, a more flexible development scheme could foster creative development design, or preserve desirable natural features, significant historical landmarks and architectural features located within the ODD. Therefore, the ODD modifies the traditional form of zoning and permits variety in design, site configuration, setbacks, layout, use, and encourages efficiency in use of land and natural resources, while ensuring compatibility with surrounding land uses.

WHEREAS, in return for greater flexibility in site design requirements, ODD’s are expected to deliver exceptional quality community designs that provide above-average pedestrian amenities, incorporate creative design in the layout of buildings, focus on pedestrian space and circulation; incorporate public art; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure.

WHEREAS, ODDs authorized under Section 5.22-3 of the Zoning Ordinance are intended to provide a better and more desirable living and physical environment than what would be possible under the zoning regulations that apply to the development of a traditional zoning district, while implementing the policies and objectives of the Comprehensive Master Plan, as amended.

WHEREAS, on or about March 18, 2013, the City of Southfield enacted ODD Ordinance #1603, (“ODD Ordinance”), which, inter alia, amended the Zoning Map and provided for such rules, conditions, and instructions for the development of certain real property located in Southfield and designated as the “_____ ODD District.” The description of the real property being the subject of the ODD Ordinance is attached hereto and described in **Exhibit A**, hereinafter referred as the “subject property.”

WHEREAS, on _____, 2013, the City Council of the City of Southfield (the “City Council”) did approve the _____’s Application for an amendment to the Zoning

Map for the subject real property, rezoning same from [insert district] to ODD (insert underlying district), being Ordinance # _____, subject to such terms, conditions, and restrictions provided in the ordinance and in accordance with the Master Development Plan (“MDP”) prepared by _____, Job # _____, last dated _____, 20__, as approved and amended by the terms, conditions, and restrictions of the ordinance and this Agreement. A copy of the MDP is attached as **Exhibit B** and building elevations are attached as **Exhibit C**.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and consideration of the approval of the Development (sometimes referred to as the “Project”) and the City of Southfield Zoning Ordinance, the parties hereby agree as follows:

1. **Rezoning:** Pursuant to Section 5.22-3 of the Zoning Ordinance of the City of Southfield, the subject property has been zoned ODD subject to the terms and conditions of the MDP, Section 5.22-3 of the Zoning Ordinance, and this Agreement. [Insert Developer] acknowledges and agrees that it submitted and the City accepted the development proposal for the subject property based upon the MDP, the site plans, architectural elevations and the terms of this Agreement and the City granted the rezoning of the subject property based on the terms set forth in the submitted documents. Further, [Insert Developer] acknowledges and agrees that all provisions and conditions contained in the application to rezone, the MDP, and this agreement are authorized by law, this Agreement is valid and binding, and is entered into by [Insert Developer] on a voluntary basis, representing a permissible exercise of authority by the City and [Insert Developer]. [Insert Developer] agrees that the subject property shall not be developed or used in any manner contrary to or inconsistent with the approved MDP and this Agreement.
2. **Uses:** The subject property shall only be constructed and used in accordance with the uses as permitted pursuant to Section 5.22-3(B)(1) of the zoning ordinance, the approved MDP, and this agreement. No uses expressly prohibited pursuant to Section 5.22-3(B)(2) of the zoning ordinance shall be permitted or allowed to operate on the subject property.
3. **Condition Precedent:** The rights and obligations of this Agreement are conditioned upon [Insert Developer] acquiring fee title to the subject real property on or before the expiration of one (1) year from the date of this Agreement. If this condition precedent is not met, this Agreement shall be null, void and of no force and effect, and the rezoning of the subject property to ODD shall be deemed to be immediately terminated. In the event of such termination, no development or use of the subject property shall be permitted until a new zoning classification is approved by a rezoning thereof. Upon such termination, the City Planning Department shall immediately initiate the process to rezone the subject property in whole or in part to its prior or other appropriate zoning classification. The procedure for considering and adopting this rezoning shall be the same as applied to all other zoning requests.
4. **Construction:** Once this agreement, the MDP, and final site plan(s) are approved by the Southfield City Council, the site improvements shall be commenced within eighteen (18) months after [Developer/Owner] has received approval of the final engineering plans by the City. “Commence” shall mean obtainment of all necessary building and engineering permits and that all excavation and related site preparation work on the subject property

has been completed and construction of the building foundation has substantially begun. The Owner shall thereafter actively and continuously prosecute the construction of the project to completion. If the site improvements are not commenced within the applicable eighteen (18) month period, [Developer/Owner] may request the City Council for an extension for commencement of site improvements for an additional period, not to exceed twelve (12) months; provided, however, such request for extension must be requested prior to the expiration of the required eighteen (18) month period.

If construction of the site improvements are not commenced within the time period set forth above, a new application for approval must be submitted and the MDP and the development agreement shall be reviewed by the City Council and may be revised by the City, within its discretion, to take into consideration any changes that may have occurred or are advisable due to the passage of time.

5. **Final Site Plan and Other Approvals:** [Insert Developer] shall obtain all required City, State and other governmental reviews, approvals, and permits, including but not limited to: Site Plan Approval from the Southfield City Council. [Insert Developer] shall comply with all terms and conditions of this Agreement and the Final Site Plan as approved and adopted by the Southfield City Council. The Final Site Plan shall be substantially in conformance with the MDP. Any other requirements, terms, and conditions not specifically in conflict with the ODD Ordinance and this Agreement shall be administered in accordance with the regulations and requirements of the City of Southfield Zoning Ordinance, as amended, and such other building and construction codes of the City.
 - a. Legal Description of Real Property Constituting Project: The project to which this Agreement pertains is situated in the City of Southfield, Oakland County, State of Michigan, as more particularly described in **Exhibit A**, attached hereto.
 - b. Warranty of Ownership of Land: [Insert Developer/Owner] warrants that land within the Project is owned by it in fee simple. [Insert Developer/Owner] acknowledges that this Agreement and the provisions contained herein are covenants running with the land and binding on all future owners and possessors of that real property described in **Exhibit A**.
6. **Master Development Plan (MDP) Requirements:** The approved Development is shown on the attached MDP. In addition to the MDP, the Development is expressly subject to the following provisions and specific development standards:
 - a. Architectural Design & Building Elements:
 - b. Art:
 - c. Dimensional Requirements:
 - i. Required Lot Area:
 - ii. Minimum Size (Acres):
 - iii. Minimum Lot Width:
 - iv. Maximum Height (Feet/Stories):
 - v. Front Yard Setback:
 - vi. Side Yard Setbacks:
 - vii. Rear Yard Setback:

- viii. Minimum Floor Area:
 - ix. Maximum Lot Coverage:
 - d. Easements:
 - e. Engineering & Utilities:
 - i. Sanitary Sewer:
 - ii. Storm Water:
 - iii. Water Service:
 - f. Environmental Assessment:
 - i. Wetland Impact:
 - ii. Woodland Impact:
 - iii. Preservation of Natural Features, if applicable:
 - iv. Tree Replacement Plan:
 - g. Hours of Operation:
 - h. Landscaping:
 - i. Building Foundation:
 - ii. Parking Lot:
 - iii. Perimeter:
 - i. Lighting:
 - j. Low Impact Design:
 - k. Misc. Conditions (noise, trash enclosure, etc.):
 - l. Non-Motorized Transit, Pathways & Sidewalks:
 - m. Parking & Circulation:
 - i. Cross Access:
 - ii. Ingress/Egress:
 - iii. R.O.W. Dedication, if applicable:
 - iv. Spaces Required:
 - v. Street Vacation, if applicable:
 - vi. Traffic Impacts:
 - n. Phasing Plan:
 - o. Residential, if applicable:
 - p. Screening, including ornamental fencing, walls and buffers:
 - q. Streetscape Elements:
 - r. Urban Open Space:
 - s. Uses, Permitted:
7. **Performance Guarantees:** In order to assure that the subject property is developed in accordance with the terms and conditions of this agreement, the MDP, the approved site plan, and all applicable ordinances of the City, a performance guarantee in the amount of twenty (20%) percent of the projected cost of the site improvements shall be required of [Developer/Owner] pursuant to Section 5.22-3(C)(11) of the Zoning Ordinance. Such performance guarantee may consist of a cash deposit, surety bond, or letter of credit in a form acceptable to the City Attorney. A cash performance guarantee shall be deposited with the City Treasurer. The performance guarantee shall remain in effect until all site improvements on the subject property are fully and properly completed.
8. **Violation:** Any violation of the term(s), condition(s), or provision(s) of this Agreement shall be deemed a violation of the Michigan Zoning Enabling Act (the Act) and/or the Zoning Ordinance and the remedies of the City for such a violation shall be such

remedies as are provided by this Agreement, or by law for violation of the Act and/or the Zoning Ordinance. The parties further acknowledge that the City in rezoning the subject property to ODD is expressly relying on [Developer/Owner] to complete the project in strict accordance with the terms and conditions of this agreement and the MDP. In the event [Developer/Owner] breaches or defaults in the performance of its obligations hereunder, the City may pursue any remedy provided by law or equity. In the event that the City brings an action or proceedings for injunctive relief or for an alleged breach or default by [Developer/Owner] hereunder, the City shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding in the event the City is the predominantly prevailing party in such action or proceeding, in addition to any other damages or relief awarded.

9. **Certificate of Occupancy:** No final Certificate of Occupancy shall be issued until all applicable City ordinances have been satisfied. Notwithstanding the foregoing, [Insert Developer/Owner] shall be entitled to obtain a temporary Certificate of Occupancy as determined by the Building Official in accordance with the building and zoning codes of the City. Upon completion of the development in accordance with all of the terms of this Agreement, and compliance with all building and zoning requirements, a final Certificate of Occupancy shall be issued to [Insert Developer/Owner].
10. **Rights of City Subject to City Sole Discretion; Affirmative Duty to Maintain and Repair:** The City may elect to enforce or to forego any rights granted to the City by this Agreement in its sole discretion. Any action taken by the City with respect to such rights shall be voluntary and shall not be enforceable by any of the other parties to this Agreement or by any third party claiming benefits hereunder. The provisions of this paragraph do not apply to any obligations of the City hereunder.

It is the intent of this Agreement to impose upon the owner of the property an affirmative obligation, at its sole expense, to maintain, repair and replace the improvements constructed on the subject property in accordance with this Agreement, and failure to do so will constitute a default.

11. **Recording:** This Agreement shall be executed in recordable form and recorded in the Oakland County Register of Deeds by [Insert Developer/Owner] immediately after execution hereof by the City and upon recording, a true and genuine copy of this Agreement displaying the Liber and pages of recording shall be supplied to the City.
12. **Severability and Covenants to Run with the Land:** The provisions of this Agreement shall be considered interdependent such that invalidation of any one or more of these covenants by judgment or decree or order of any court result in the invalidation of this entire Agreement, unless the parties agree otherwise in writing. The terms, provisions, and conditions of this Agreement and the MDP are for the benefit of the City, shall be binding upon the parties hereto and their respective successors and assigns and shall run with the title to the land, unless and until amended, altered or terminated pursuant to agreement between the City and [Insert Developer/Owner], its successors or assigns pursuant to the terms of this Agreement.
13. **Modifications, Amendments:** No modification or amendment of this Agreement shall occur without the written consent of the parties and as authorized pursuant to Section 5.22-3(C)(9). A "minor modification" of the agreement (as defined in Section 5.22-3(c)(9)(a)) may be made upon the approval of the City Planning Director. A "major

modification” (as defined in Section 5.22-3(C)(9)(b)) shall require the recommendation of the City Planning Commission and approval of the City Council.

14. **No Waiver:** The failure of either party to insist upon strict performance of any of the terms, conditions or covenants hereof, shall not be deemed a waiver of any rights or remedies that such party may have hereunder, at law or in equity, and should not be deemed a waiver of any subsequent breach or default under this Agreement. No waiver by either party of any default under this 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 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 provisions of this Agreement should not be deemed to be a waiver of any subsequent default in the performance of the same provision or of any other term or provision contained in the Agreement.
15. **Time:** Time is of the essence in the performance of the obligations set forth in this Agreement.
16. **No Partnership:** None of the terms of the provisions of this Agreement shall be deemed to create a partnership or a joint venture between [Insert Developer/Owner] and the City; nor shall any party or their agent be deemed to be the agent or employee of the other party to this agreement..
17. **Rights and Remedies:** The rights and remedies of the parties set forth in this Agreement are in addition to and not in lieu of all the rights and remedies which would otherwise be available to them at law or in equity. All rights and remedies are cumulative, and the exercise by a part of a particular right or remedy upon the other party’s default shall not preclude the exercise by it of other or additional rights or remedies for the same default or a different default.
18. **Governing Law:** This Agreement shall be governed by the laws of the State of Michigan. Venue for any proceedings arising under this agreement shall be proper only in the Circuit Court for the County of Oakland, Michigan, or where applicable, the Federal District Court situated in Detroit, Michigan.
19. **Notices:** Any notices required by the terms of this Agreement shall be in writing, and mailed to the other party via U.S. mail addressed to such party at the address set forth at the beginning of this Agreement, or to such other address as one party may provide to the other by written notice. Any notice to the City shall be sent to the City Clerk, with a copy to the City Attorney.
20. **No Discrimination:** [Developer/Owner] and its contractors and subcontractors shall not discriminate against employees or applicants for employment with respect to hire, tenure, terms and conditions or privileges of employment, including any benefit plan or system or matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status, or disability which is unrelated to the person’s ability to perform the requirements of the job. Breach of this covenant shall be regarded as a material breach of this agreement.,
21. **Recitals:** The recitals set forth at the beginning of this Agreement are hereby incorporated in and made a part of this Agreement.
22. **Entire Agreement:** This Agreement, including the MDP, the Zoning Ordinance, the approved final site plan, and Exhibits A – C, incorporated herein by reference and made a

part hereof, set forth all of the agreements, stipulations, promises and conditions between the City and [Developer/Owner] as of the date hereof, and there are no covenants, agreements, stipulations, promises, conditions or understandings, either oral or written, between them other than as set forth herein.

IN WITNESS THEREOF, the parties have executed this instrument the day and date first written above.

Witness:

[Developer/Owner]

By: _____

Its: _____

CITY OF SOUTHFIELD, MICHIGAN

By: _____
Brenda L. Lawrence, Mayor

By: _____
Nancy L.M. Banks, City Clerk

EXHIBIT A
(Property Description and Survey)

EXHIBIT B
(Master Development Plan)

EXHIBIT C
(Building Elevations)

L/Planning/Zoning Ord Update/Overlay District/OVERLAY DEVELOPMENT DISTRICT AGREEMENT FINAL Template