



CITY of NOVI CITY COUNCIL

Agenda Item 1
June 4, 2018

SUBJECT: Approval of a Second Completion Agreement with Tollgate Woods, III, LLC for SP12-0007 (aka SP98-50), the Tollgate Woods III Site Condominium residential development located south of Thirteen Mile Road and west of Meadowbrook Road, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

SUBMITTING DEPARTMENT: Community Development Department

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

City Council is being asked to consider a request from Tollgate Woods, III, LLC to approve a Second Completion Agreement for the Tollgate Woods III Site Condominium, SP12-0007 (aka SP98-50) from July 1, 2017 to November 1, 2018. The current agreement was approved in February 2015 and generally required completion by July 1, 2017 (extended until December 2018 on June 19, 2017). The developer has worked diligently to close out the project as sales have allowed, but is requesting the specified time to complete the work.

Chapter 26.5 of the Novi City Code specifies procedures and required financial guarantees that must be in place if development of a project extends beyond a period of two (2) years. A formal Completion Agreement document outlining the remaining work and timeline for completion is required to be submitted for approval by the City Council. Posting of financial guarantees typically equal to 200% of the value of the outstanding work is also required. The Completion Agreement and financial guarantees protect the residents of Novi from the possible expense if the City had to complete an unfinished project due to developer default or nonperformance.

The Tollgate Woods III Condominium development is comprised of 57 single family home sites established as part of a site condominium. The project is located between Twelve and Thirteen Mile Roads and is west of Meadowbrook Road.

This project is subject to the provisions of Chapter 26.5 of the Novi City Code, and requires a Completion Agreement because the original developer had not completed the site improvements shown on the approved site plan within two (2) years of issuance of the initial permit for any improvements (May 9, 2012).

As a condition of the current Completion Agreement, Tollgate Woods III, LLC, the developer, had agreed to provide assurances including provision of a performance guarantee in the amount of no less than 200% of the cost of the work to be completed.

Under the terms of the current Completion Agreement the City holds a Performance Guarantee of \$524,347.00 . Staff recommends continuing to hold the same amount in view of the additional period of potential deterioration and escalation of material and installation costs during the requested extended duration of the agreement which contemplates completion of:

- Planting of 356 Woodland replacement trees or contribution to the Tree Fund prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by November 1, 2018.
- Maintenance and repair of tree protection fencing for the duration of work.
- Installation of 154 remaining street trees prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by November 1, 2018.
- The installation of all site landscaping described in the initial agreement has been completed and the work remains under (2) year maintenance period.
- Maintenance of Soil Erosion and Sedimentation Control permit and measures including stabilization for the duration of the project.
- Repairs and completion of certain utility repairs and punch list items by December 31, 2018 and repair and completion of all outstanding utility, pavement, curb and other incomplete site work prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by November 1, 2018.
- Repairs and completion of all restoration and work proposed within the City of Novi right-of-way prior to issuance of the final 3 Certificates of Occupancy for homes and in all events by November 1, 2018.

RECOMMENDED ACTION: Approval of a Second Completion Agreement with Tollgate Woods, III, LLC for SP12-0007, the Tollgate Woods III Site Condominium residential development located south of Thirteen Mile Road and west of Meadowbrook Road, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager .



JOHNSON ROSATI SCHULTZ JOPPICH PC

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May 22, 2018

Charles Boulard, Director
CITY OF NOVI
Community Development
45175 W. Ten Mile Road
Novi, MI 48375

**RE: Tollgate Woods III Site Condominium
*Agreement for Completion and Maintenance of Improvements***

Dear Mr. Boulard:

Enclosed please find the proposed First Amended Agreement for Completion and Maintenance of Improvements for the Tollgate Woods III Site Condominium Development. The initial Agreement for Completion and Maintenance of Improvements required completion of site improvements prior to July 1, 2017. Prior to that date, the Developer notified that City requesting further extension of the deadlines for completion on the basis that home sales had not progressed at the rate originally projected. Although certain improvements have been completed since the approval of the initial Agreement for Completion and Maintenance of Improvements, and therefore have been deleted from the terms of the First Amended Agreement, the remaining terms of the Agreement are consistent with the initial Agreement except to the extent that the completion deadlines have been extended to November 1, 2018, which is two weeks prior to the 2018 inspection cut-off date.

The incomplete improvements include the completion of site work, including road maintenance and paving repairs, and the installation of the final wearing course, the installation and maintenance of street trees, the maintenance and removal of woodland protection fencing, maintenance of site landscaping, installation of woodland replacement credits and the installation and maintenance of soil erosion control measures throughout construction.

In the event that woodland replacement credits are not installed before November 1, 2018, the City may elect to place equivalent amounts in the City's Tree Fund.

The Developer has already posted the required increased performance guarantee in the form of a letter of credit in the amount of \$524,347.00, which is 200% of the estimated cost of completion of the remaining site improvements.

Charles Boulard, Community Development Director
March 16, 2018
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Based on all of the above, the First Amended Completion Agreement is acceptable in the format proposed and meets with the requirements of Chapter 26.5.

If you have any questions, please do not hesitate to call.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Elizabeth Kudla Saarela

EKS

Enclosures

C: Cortney Hanson, Clerk (w/Enclosures-Originals)
Charles Boulard, Community Development Director (w/Enclosures)
Barb McBeth, City Planner (w/Enclosures)
Angie Pawlowski, Community Development Bond Coordinator (w/Enclosures)
George Melistas, Senior Engineering Manager (w/Enclosures)
Theresa Bridges, Construction Engineer (w/Enclosures)
Sarah Marchioni, Community Development Building Project Coordinator (w/Enclosures)
Ted Meadows, Spalding DeDecker (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Mike Kahm, Singh Development (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

TOLLGATE WOODS III

**FIRST AMENDED AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

THIS FIRST AMENDED AGREEMENT, dated _____, 2018 by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 ("City"), and Tollgate Woods III, LLC, a Michigan limited liability company (hereinafter referred to as "Developer"), the address of which is 7125 Orchard Lake Road, Suite 200, P.O. Box 255005, West Bloomfield, Michigan 48325-3005, ("Developer"). Developer is the owner and developer of the Tollgate Woods III Site Condominium ("Development").

R E C I T A T I O N S :

The subject land has been approved for development as part of the Vistas Planned Unit Development ("Vistas PUD") pursuant to the provisions of the City of Novi Zoning Ordinance, the PUD Agreement for the Vistas PUD, and all amendments thereto, and the Consent Order entered by Oakland County Circuit Court on January 27, 1999, recorded at Liber 19623, Page 063, Oakland County Records (the "Consent Order") with respect to the Vistas PUD. Tollgate Woods III has been approved to contain fifty-seven (57) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the "Development."

Developer intends to complete the Development in accordance with the approved Site Plan subject to the PUD Agreement and Consent Order, and as otherwise provided by applicable law including all applicable approvals and ordinances and this Agreement, including Chapter 26.5 of the City of Novi Code of Ordinances.

Developer entered into an Agreement for Completion and Maintenance of Improvements, dated February 9, 2015, (the "Original Agreement") with the City in accordance with Chapter 26.5 of the City of Novi Code of Ordinances, Section 26.5-5 (b) providing the Developer with additional time beyond that set forth by Ordinance for the completion of improvements. Pursuant to the Original Agreement, Developer was required to complete the remaining improvements on or before July 1, 2017. Developer has requested a further extension of time for completion of improvements, and City Council has considered and approved an additional extension as set forth in this First Amendment.

Consistent with all applicable laws and ordinances, more particularly Chapter 26.5 of the City of Novi Code of Ordinances, to obtain an additional extension with respect to completion of improvements, Developer has offered to provide, and the City is willing to accept, certain assurances to the City that such improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantee in an amount no less than two hundred (200) percent of the cost of the

work to be completed, and a schedule, for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

The City and the Developer enter into this First Amendment inclusive of the above Recitations for the purpose of ensuring that certain improvements for the Development will be completed and maintained pursuant to all approvals granted by the City and the Consent Order, all applicable laws and ordinances, and that such completion and maintenance occur on a timely basis, in accordance with a schedule approved by City Council.

2. Performance Guarantee Posted

Prior to or with the execution of this First Amended Agreement, the Developer has provided, or does provide, to the City, a performance guarantee in the total amount of \$524,347.00 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds have been posted in the form of irrevocable Letter of Credit No. _____ issued by _____ ("Bank"), to guarantee completion and maintenance of improvements the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year the letter of credit shall provide by its terms that it will, without further action by any person or entity, be continuously renewed and be continuously effective for successive periods of one (1) year, subject to termination only by 60 days advanced, written notice by Bank to the Finance Director. As a condition to the termination of the effectiveness of the letter of credit, Bank shall be required to provide to the office of the City's Finance Director, with 60 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

3. Items of Improvement and Maintenance

Subject to changes or damages to the improvements that may occur as a result of continuing construction, the items of improvements and maintenance included within this Agreement, and the estimated cost of completion and ongoing maintenance, are set forth below:

a. Woodland Replacements	\$ 142,400.00
b. Woodland Fence	\$ 5,000.00
c. Street Trees	\$ 61,600.00
d. Landscape maintenance	\$ 1,000.00 ¹
e. Soil Erosion and Sedimentation Control	\$ 31,125.00 ²

¹ Not doubled per Ordinance

² Not doubled per Ordinance.

f. Incomplete Site Work	\$ 35,111.00
g. Right-of Way Restoration	\$ 2,500.00
Subtotal:	\$ 246,111.00
200% Multiplier:	<u> x2</u>
	\$ 492,222.00
	+ 32,125.00
Total Performance Guarantee:	\$ 524,347.00

4. Completion and Maintenance of Improvements; Schedule and Requirements

Each of the Improvement Items listed in Paragraph 3, above, shall be completed and maintained by the Developer, at its expense, pursuant to all final approvals granted by the City and all applicable laws and ordinances, according to the following schedule:

- a) Improvement Item 3a contemplates and includes the installation of 356 on-site woodland replacement credits as set forth in the Woodland Permit for the Development. Woodland replacements shall be installed prior to the issuance of the final three (3) certificates of occupancy within the Development, and in all events on or before November 1, 2018. In all events, if replacements are not installed on or before November 1, 2018, the City may, in its discretion, deposit remaining amounts in the City’s Tree Fund. For two (2) years from the date of completion of the installation of all such woodland replacement trees installed as part of the Development, Owner shall, under this Agreement, maintain the replacement trees, which maintenance shall include the replacement of any dead, substantially dead, diseased or removed trees during such two (2) year period. The total financial guarantee includes the posting of an appropriate bond amount pursuant to the applicable City Ordinance, to guarantee replacement of any dead, substantially dead, diseased or removed woodland replacement trees during the two (2) year period following installation of the trees.

- b) Improvement Item 3b contemplates and includes installation, maintenance and removal of tree protection fencing in the Development in order to protect woodland trees from damage. The tree protection fence shall be maintained and repaired on a continuous basis as necessary until completion of the applicable portion of the development.

- c) Improvement Item 3c contemplates and includes the installation of the remaining 154 street trees within the Development. The remaining street trees shall be installed before the issuance of the final three (3) certificates of occupancy within the Development, and in all events, before November 1, 2018. For two years from the date of completion of the installation of all such trees installed in the Development, Developer shall, under this Agreement, maintain the trees that were so installed, which maintenance

shall include the replacement of any dead, substantially dead, diseased, or removed trees during such two (2) year period.

- d) Improvement Item 3d contemplates and includes the installation of all site landscaping, including all plant materials for the site. Site Landscaping has been completed and started the warranty period on November 17, 2015. For two (2) years from the date of completion of the installation of all such landscape plantings installed as part of the Development, Owner shall, under this Agreement, maintain the landscape plantings that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased or removed landscape plantings during such two (2) year period. The total financial guarantee includes the posting of an appropriate bond amount pursuant to the applicable City Ordinance, to guarantee replacement of any dead, substantially dead, diseased or removed site landscaping during the two (2) year period following installation.
- e) Improvement Item 3e contemplates and includes without limitation, (i) the immediate installation of all required soil erosion and sedimentation controls; and (ii) completion of repairs and maintenance of the soil erosion and sedimentation controls within and for the Development on an ongoing basis until issuance of the final certificate of occupancy for the Development. Successor Developer shall renew and keep the Soil Erosion Permit current. Nothing herein shall limit the City's remedies for violation of the City's Soil Erosion and Sedimentation Control Ordinance.
- f) Improvement Item 3f contemplates completion, repair and maintenance of improvements, as set forth in the City Consulting Engineer's punchlist, including but not limited to:
 - 1. Reset casting on catch basin 72A;
 - 2. Jet 12" storm sewer between catch basin 59A and 59C;
 - 3. Base course asphalt repairs leading into final paving;
 - 4. Concrete curb and gutter repairs;
 - 5. Wearing (Top) course of street pavement

1-5 of Improvement Item 3f, above shall be completed before November 1, 2018 but in all events, shall be completed prior to the issuance of the final three (3) certificates of occupancy within the Development, whichever occurs first. Until such time as the asphalt wearing course is installed, Developer shall be responsible under this Agreement for maintenance and repairs of all internal paved areas. For purposes of this Agreement "maintenance and repairs" of such areas shall mean and include, without limitation, removing of debris and obstacles, repairing pot holes and cracks, adding new materials, providing for proper drainage, constructing all needed structures (e.g., without limitation, lateral support, drainage, etc.), resurfacing and such other action as shall be necessary or expedient to provide structural integrity and substantially continuous, unobstructed and safe vehicular

passage to and through the Development, and providing unobstructed drainage as necessary or required.

- g) Improvement Item 3g contemplates and includes, without limitation, security for restoration for any work proposed within the right-of-way of the arterial system of the City as construction of the Development is ongoing. The improvement items within this Section may change over time based on wear and tear. Improvements Item 3g shall be completed in all events on or before prior to the issuance of the final three (3) certificates of occupancy within the Development, and in all events on or before November 1, 2018.

5. City Authority to Complete and/or Maintain.

In the event Developer has failed to complete and/or maintain the improvements itemized in Paragraph 3, above, within the time periods and in the manner specified in this Agreement, and, provided the City has given the Developer 30 days' notice of the failure to timely complete and/or maintain and Developer has not completed and/or maintained all of such improvements within said 30 days after such notice and provided that the City is not in default of any material obligations in this Agreement and as required by applicable law the City shall have the authority, but shall not have the legal obligation, to take one or more of the following actions:

(a) The City may draw the Performance Guarantee and enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain the improvements, or restore the Property or areas disturbed in the Development. In such event, all costs and expenses incurred shall be paid from the Performance Guarantee. Any amounts of unused Performance Guarantee shall be returned to Developer, or otherwise be credited, as the case may be. Developer, and those person and/or entities acting on behalf of the Developer, shall be obligated to act and work in cooperation with the City to bring about completion and/or maintenance of the improvements as contemplated in this Agreement, or restoration, and shall provide the City with all drawings, contracts, documentation, public and private correspondence, agreements and other materials relating to any such improvements, restoration and/or maintenance.

(b) The City may, but is not required to, initiate a lawsuit for purposes of enforcing and achieving full compliance with the terms and provisions of this Agreement. In the event that the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

(c) The City may, in its discretion, in accordance with the provisions of Chapter 26.5, grant Developer additional time beyond the time periods referenced in Paragraph 4, in accordance with the provisions of Chapter 26.5 of the City of Novi Code of Ordinances, which provisions may be amended from time to time.

6. Additional Liability

Developer shall also be liable for any costs and expenses incurred by the City in excess of the Performance Guarantee provided under this Agreement as well as any costs and expenses, including reasonable attorney fees, incurred by the City in any action and/or litigation to enforce or collect such funds and/or to otherwise restore the property and/or secure completion and/or maintenance of the improvements itemized in Paragraph 3, above, pursuant to the terms of this Agreement, in the event the City obtains any relief as a result of such lawsuit. The liability of Developer in such regard, if unpaid after 30 days of a billing sent to Developer at its last known address, may be secured by the City recording a lien on the Property as to those units still owned by the Developer, effective as of the date the City is authorized to proceed with the completion and/or maintenance of improvements, or restoration, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable attorney fees incurred by the City in connection with such suit.

7. Rebate or reduction of Performance Guarantee

- (a) Full Release. The City shall not release Performance Guarantees associated with the completion of the items of improvement and maintenance referenced herein until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required (4) expired permits have been renewed; and (5) the City has determined that the conditions and requirements of the permit/approval otherwise specified in this Agreement have been met and final approval of same has been granted. Soil Erosion permits must be brought up to date and renewed on an ongoing basis until issuance of the final certificate of occupancy in the development.
- (b) Partial Release. The City may, after performing a site inspection at the written request of the Developer, rebate or reduce portions of the Performance Guarantees upon determination by the City, in its sole discretion, that the improvements and/or actions for which that Performance Guarantee was posted as itemized above in paragraph 3a through d. have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. At no point shall the amount of the Performance Guarantee held by the City be less than two hundred (200) percent of the cost to complete the remaining required improvements on the Property. The Developer is responsible for the actual cost of inspections requested pursuant to this section.

8. Binding Effect

This Agreement shall run with the land constituting the Property described on Exhibit

land shall be binding upon and inure to the benefit of the City and Developer and to their respective heirs, successors, assigns and transferees.

9. Owner's Warranty on Ownership

Upon Developers purchase of the Property, the Developer hereby warrants that it is the owner of the Property described on attached Exhibit 1 (except for those Units and the undivided rights in General Common Elements appurtenant to those Units that have been conveyed to Co-owners), and that it, and Developer has the full authority to execute this Agreement as to Unit still owned by Developer.

10. Delay in Enforcement

A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the City's or the Developer's respective rights to eventually enforce, or take action to enforce, the terms of this Agreement.

11. Severability

Each covenant, requirement, obligation and provision contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event one or more of the covenants, requirements, obligations or provisions shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining covenants, requirements, obligations and provisions shall nevertheless remain in full force and effect.

12. Lawful Document

Developer and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Developer has offered and agreed to complete the on-site and off-site improvements, at their cost and expense, as specified in this Agreement. Developer has offered and agreed to complete such improvements, and to proceed with other undertakings and obligations as set forth in this Agreement in order to protect the public health, safety and welfare and provide material advantages and development options for the Developer, all of which improvements and obligations Developer and the City agreed were roughly proportional to the burden imposed and necessary in order to ensure that public services and facilities necessary for or affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially, environmentally and economically desirable manner, and to achieve other reasonable and legitimate objectives of the City and Developer, as authorized under applicable City ordinances and the Home Rule City Act, MCL 117.1, et seq. Furthermore, Developer fully accepts and agrees to the final terms, conditions, requirements, and obligations of this Agreement, and Developer shall not be permitted in the future to claim that the effect of this Agreement results in an unreasonable limitation upon use of all or any portion

of the Property, or claim that enforcement of this Agreement causes an inverse condemnation or taking of all or any portion of such property. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the development of the Property, and are, without exception, clearly and substantially related to the City's legitimate interests in protecting the public health, safety, and general welfare. It is further agreed, that this Agreement shall not prohibit the Developer from seeking and obtaining amendments to the Consent Judgment and/or Site Plan as provided by applicable law, and/or from Amending the Master Deed and/or the Development Documents as provided applicable law and from otherwise rezoning, developing and using the Property as provided by applicable law.

13. Applicable Law

This Agreement shall be interpreted and construed in accordance with Michigan law, and shall be subject to enforcement only in Michigan courts.

14. Current and Future Owners and Developers.

As used in this Agreement, the term "Developer" shall mean and include the undersigned party designated herein as developer of the Property, as well as all future and successor persons and entities that become successor developers of all or any portion of the Development property in the future until such time as all phases of the Development have been completed and approved.

15. Headings.

The headings contained herein are for the convenience of the parties and are not to be used in construing or interpreting this Agreement.

16. Effective Date.

This Agreement is deemed effective as of the date first written above.

16. Recording.

This Agreement is not intended to be recorded with Oakland County Records.

"DEVELOPER"

Tollgate Woods III, LLC, a Michigan limited liability company

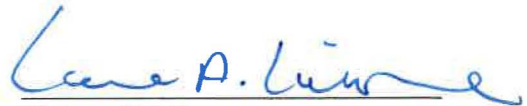


By: AVTAR S. GREWAL
Its: MANAGER

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 21 day of MAY, 2018, by AVTAR S. GREWAL, as the MANAGER of TOLLGATE WOODS III, LLC

LAWRENCE A. KILGORE
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Dec 20, 2022
ACTING IN COUNTY OF OAKLAND



Notary Public
Oakland County, Michigan
My Commission Expires: 12-20-22

“CITY”:
CITY OF NOVI
a Michigan municipal corporation

BY: _____

BY: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged, signed and sworn to before me on this _____ day
_____, 2018, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

EXHIBIT 1

Tollgate Woods, III, according to the Master Deed recorded in Liber 48124, Pages 21 through 98, inclusive, Oakland County Records, and designated as Oakland County Condominium Subdivision Plan No. 2049, together with rights in common elements and limited common elements, as set forth In the above Master Deed (and amendments thereto) and as described in Act 59 of the Public Acts of 1978, as amended.