

Niles Charter Township
Berrien County
Ordinance # _____

AN ORDINANCE TO AMEND CHAPTER 2 DEFINITIONS, CHAPTER 17 SPECIAL
LAND USES AND CHAPTER 18, PLANNED UNIT DEVELOPMENT OF THE NILES
CHARTER TOWNSHIP ZONING ORDINANCE

NILES CHARTER TOWNSHIP HEREBY ORDAINS:

- 1. SECTION 2.03, DEFINITIONS - "B" IS HEREBY AMENDED TO ADD THE FOLLOWING DEFINED TERM, IN ALPHABETICAL ORDER.**

BUILDING ENVELOPE

That portion of a Lot within which the Principal Building, Accessory Buildings, and driveways are to be constructed, outside of all Yards and setbacks required by this Ordinance or as approved as part of the Density Bonus Option approval.

- 2. SECTION 2.04, DEFINITIONS - "C" IS HEREBY AMENDED TO ADD THE FOLLOWING DEFINED TERM, IN ALPHABETICAL ORDER.**

CLEARANCE ZONE

Those portions of a Building Envelope which are required to be excavated or cleared of existing vegetation and/or topsoil for the purposes of construction of Principal Buildings, Accessory Buildings, utility lines, driveways, sidewalks, and other similar necessary Structures or facilities.

- 3. SECTION 2.19, DEFINITIONS - "S" IS HEREBY AMENDED TO ADD THE FOLLOWING DEFINED TERMS, IN ALPHABETICAL ORDER.**

SENSITIVE LANDS

Lands classified for purposes of density calculation that contain a minimum contiguous area of two (2) acres and which contain significant natural features.

SIGNIFICANT NATURAL FEATURE

Any area which exhibits unique topographical, ecological, or hydrological characteristics such as wetlands, flood plains, water features, woods, slopes in excess of fifteen (15%) percent, active agricultural lands, or other unique natural features, as determined by the Township Board, Planning Commission, Michigan Department of Natural Resources and Environmental (MDNRE), or other appropriate agency.

- 4. SECTION 2.21, DEFINITIONS - "U" IS HEREBY AMENDED TO ADD THE FOLLOWING DEFINED TERMS, IN ALPHABETICAL ORDER.**

UNCONSTRAINED LANDS

Lands classified for purposes of density calculation which are not classified as Sensitive Lands.

UNDEVELOPABLE LANDS:

Lands located within wetlands regulated by the Michigan Department of Natural Resources and Environment, submerged lands beneath any permanent surface water lake or stream, lands within a 100-year floodplain as established by the Federal Emergency Management Agency, lands with slopes in excess of 25%, lands encumbered by any other permanent restrictions that prevent development, such as utility, drainage or access easements.

USEABLE OPEN SPACE

Lands within a development designed and intended for uses that do not require significant built improvements; such as walking, cross-country skiing, biking, nature study, bird watching, picnicking, community gardening, hunting, fishing or the playing of golf or disk golf. Useable open space is distinct from areas devoted to conservation or sensitive lands without built improvements which would normally not be accessible for use by humans and from areas devoted to active pursuits on open space, such as ball fields or recreational vehicle courses.

5. SECTION 1701, SCOPE, IS HEREBY AMENDED TO READ AS FOLLOWS:

This Chapter provides a set of procedures and standards for uses of land or **structures** which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole. The regulations and standards herein are designed to allow practical latitude for the applicant and at the same time, maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the residents of Niles Township. For purposes of this Ordinance, all Special Land Uses within the various districts are subject to the conditions and standards of this Chapter. In addition, individual uses shall conform to the specific standards cited in Section 17.04, or Chapter 18, as applicable.

6. CHAPTER 18 IS HEREBY AMENDED IN ITS ENTIRETY, TO READ AS FOLLOWS:

SECTION 18.01 - INTENT

A. Planned Unit Developments (PUDs) in the Township shall be established as a Special Land Use, where authorized, when approved by the Planning Commission in accordance with the procedures specified in this Chapter. The purpose of the Planned Unit Development is to further implement the intent of the Township Master Plan and to:

1. Provide for flexibility in the regulation of land development;

2. Encourage innovation in land use and variety in design, layout, and type of buildings and structures;
 3. Achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities;
 4. Encourage the use of land in accordance with its character and adaptability;
 5. Encourage the provision of useful open space for residents of the development and, where feasible, the general public;
 6. Promote the enhancement of housing, employment, traffic circulation, pedestrian movement, and recreational opportunities that benefit all residents of the Township;
 7. Provide for the regulation of a variety of land uses not otherwise authorized within a single zoning district;
 8. Provide for developments which would result in recognizable and substantial benefits to the ultimate users of a development, and to the community in general, where such benefits would be unfeasible or unlikely to be achieved under the conventional requirements of this Ordinance; and
 9. Provide greater protection of, and reduce adverse impacts on, quality natural features in comparison to the impacts associated with a conventional development.
- B. In order to accomplish these objectives, this Chapter permits modification of the conventional requirements applicable to the underlying Zoning District(s), including the requirements, procedures and standards of Chapter 17 which may conflict with this Chapter. The use of land and the construction and use of buildings and other structures as a PUD shall be in conformance with the procedures, standards, requirements, and conditions for eligibility contained in this Chapter. A PUD should not be utilized to relax the requirements of the zoning ordinance; except in those cases where a demonstrable benefit to the community will result.

SECTION 18.02 - QUALIFYING CONDITIONS

Any development, which fails to meet the following qualifying conditions, at a minimum, shall not qualify for development as a PUD.

- A. All PUDs shall be served by available public water and/or public sanitary sewer facilities or, when not available, a privately-owned and operated licensed community system approved by the Planning Commission, the Berrien County Health Department, or other agencies, as appropriate. For the purposes of this Chapter, public water and/or sanitary sewer shall be considered available if public service mains or sewer lines with sufficient available capacity to serve the proposed development are located within 1,000 feet of the boundary of any portion of the proposed PUD.
- B. The tract of land for which a PUD application is received must be either in one ownership or the subject of an application filed jointly by the owners of all properties and/or their agent. In the case of a PUD filed jointly by the owners of all properties, the nature of the relationship and any agreement among the joint owners shall be disclosed and the Planning Commission

shall be satisfied that such relationship is capable of implementing the PUD. If the PUD application is filed by a prospective purchaser or option holder, written consent of all property owners must be submitted as evidence of their concurrence with the PUD application.

- C. The proposed uses, residential densities and land use intensity of the PUD must be consistent with the Master Plan, except as otherwise permitted under the terms of this Chapter.
- D. All PUDs that are predominately residential in character shall provide a minimum of twenty-five (25%) percent open space. For the purposes of this Chapter, a PUD shall be regarded as predominately residential in character if 50% or more of the developed portion of the site is to be used for residences. Open spaces and natural features that significantly contribute to the community's character must be preserved in perpetuity through the condominium documents, a conservation easement, deed restriction development agreement or other mechanism satisfactory to the Township and shall be maintained as provided in Section 18.03, B, 5.
- E. The proposed PUD shall be compatible with surrounding uses of land, the natural environment, and the capacities of public services and facilities affected by the development. The Planning Commission may request that groundwater resource studies be conducted to ensure adequate water supply, and may require pre-approval from the County Health Department, County Road Commission, the Michigan Department of Natural Resources and Environment or any other State or Federal agency that has jurisdiction over the development.
- F. The proposed PUD must meet all the review standards of Section 19.03.
- G. The proposed PUD must meet the standards for special land use permits, as set forth specified in Section 17.03.
- H. The PUD site shall have direct access to a major or minor arterial road, as classified by the Traffic Network Map in the Township Master Plan.

SECTION 18.03 - SITE DEVELOPMENT REQUIREMENTS

Except as otherwise approved pursuant to this Chapter, all requirements of the underlying zoning district pertaining to land uses and dimensional standards shall apply to all PUD developments. Further, all PUD developments must adhere to the following standards:

- A. Residential Density. The number of residential dwelling units permitted shall be determined based on the potential yield of the site, as permitted by the zoning regulations applicable to the site. The Township may approve residential dwellings in excess of the number that might otherwise be approved pursuant to subparagraph 2 of this Section.
 - 1. Base Density. The number of residential dwelling units allowed shall be calculated by dividing the Net Developable Area, as set forth below, by the minimum lot size required in the underlying zoning district. Where there are multiple underlying zoning districts, the base density shall be determined for each and the results shall be summed.
 - a. Net Developable Area shall include the gross square footage of the site, measured from the road rights-of-way, minus undevelopable land as defined herein,
 - 1) Provided, that areas of wetlands or surface water, may be included within the Net Developable Area so long as the total of such area does not comprise more than

30% of the total Net Developable Area-

- 2) Net Developable Area shall exclude 20% of the gross square footage, to account for proposed roads. A smaller percentage may be considered if an approvable parallel plan is submitted showing how roads designed under conventional design would require less land area. Such parallel plan shall meet the requirements of subparagraph (4) of this section
 - 3) The Township shall review the applicant's site plan application for the determination of Net Developable Area and determine the resulting base density. In the event the applicant does not agree with the Township's determination of base density, the applicant shall prepare a parallel plan as specified in subparagraph (4) of this Section and base density shall be determined based on said parallel plan.
 - 4) The parallel plan shall depict a "by right" feasible build out of the site based on the underlying zoning regulations without application of any of the provisions of this PUD Chapter. A parallel plan shall meet the following requirements:
 - a) The parallel plan shall contain enough detail to permit the Township to evaluate the feasibility of development for each indicated Lot and/or Dwelling Unit.
 - b) At a minimum, the parallel plan shall show property boundaries and dimensions, individual lots, building envelopes, street rights-of-way or easements, significant natural features (wetlands, water features, and similar constraints), and utility easements. The Planning Commission may require additional detail or information as it may determine necessary to evaluate the feasibility of the parallel plan.
 - c) All lots or buildings shown on the parallel plan shall be buildable, which for the purposes of this Section shall mean lots or building areas that meet the minimum requirements of the Zoning District to which the property corresponds; that have an area of sufficient size and shape to accommodate the proposed principal building; and that provide required driveways, streets, or other means of permitted access.
- b. For sites containing less than 20% net developable area, the applicant shall demonstrate to the Township's satisfaction that the proposed development can be reasonably accommodated on the site, given setback and buffering requirements, without negative impacts to the environment or the general public.
2. Potential Density Increases. Based on the following, the Planning Commission may approve an increase in density on the site up to 120% of the base density where it finds, in its sole judgment, that the development will provide significant benefits to the community, which may include one or more of the elements or amenities listed below with the corresponding increase in density as noted. Any increase in density permitted under this paragraph shall be determined in the sole discretion of the Planning Commission. The

total residential density on the entire PUD shall not exceed 120% of the base density.

Project Elements or Amenities	Resulting Potential Increase in Base Density
a. Provision of open space that is open to the general public.	Up to 5%
b. Inclusion of pedestrian pathways and non-motorized elements.	Up to 5%
c. Inclusion of at least 10% additional open space above the minimum required.	Up to 2%
d. Preservation of significant natural features, such as steep slopes, site topography, wetlands, woodlands, important wildlife habitat, streams and/or natural vegetative buffers.	Up to 3%
e. Inclusion of low-impact design of stormwater systems, parking areas, and green buildings. Design elements such as rain gardens, pervious pavement products or grass pavers, and LEED certifications shall contribute to low-impact design.	Up to 3%
f. Use of alternative energy sources that can provide 5% or more of the needed energy for the site. Detailed calculations of anticipated energy needs must be submitted to document this benefit.	Up to 3%
g. Donation and acceptance of valuable recreation land to the Township or other public entity for enjoyment by the general public	Up to 2%
h. Provision of unique development patterns, such as traditional neighborhood design or mixed-use, that support the vision of the Township as expressed in the Master Plan.	Up to 2%

3. In applying the percentages of the table in paragraph 2 of this section, a fractional result shall be rounded to the nearest whole number.

B. Open Space. In predominately residential PUDs, open space shall meet the following requirements:

1. Individual areas of open space shall be large enough and of proper dimensions to contribute significantly to the intent of the PUD, and in no event shall an isolated area of less than 1,000 square feet or a area with the least dimension of 5 feet or less be considered a part of the designated open space.
2. The following land areas or features shall not be included as designated open space for the purposes of meeting minimum open space requirements:
 - a. Any area to be conveyed for private ownership, including lots, development envelopes or building envelopes or limited common elements in a site condominium. General common elements of a site condominium may be included if they otherwise meet the requirements of this ordinance.
 - b. The area of any road right-of-way or private road easement.
 - c. Surface water in natural streams or rivers or in natural or man-made lakes or ponds. Areas devoted to constructed stormwater detention or retention basins may be counted for up to fifty percent (50%) of the total open space requirement if they are designed to have the appearance of a natural wetland.
 - d. Parking and loading areas.
 - e. Any other undeveloped areas not meeting the intent and standards for open space stated in this Section, as determined by the Planning Commission.
3. At least one-third (1/3) of the required open space shall be usable open space for the residents of the development and may be available for use by the general public.
4. Allowable use(s) of the designated open space shall be clearly established in a conservation easement, master deed, deed restriction or other legal instrument satisfactory to the Township. Such legal instrument shall prohibit the following unless prior approval of the Township and any authority having jurisdiction is first granted:
 - a. Dumping or storing of any material or refuse.
 - b. Activity that may cause risk of soil loss.
 - c. Cutting or removal of live plant material in natural areas, except for removal of dying or diseased vegetation.
 - d. Cutting, filling or removal of vegetation from wetland areas.
 - e. Use of pesticides, herbicides, or fertilizers either within or adjacent to (within 100 feet of) water bodies and wetlands, unless required by the Michigan Department of Environmental Quality to manage nuisance species.
5. Open Space Maintenance. Designated open space shall be set aside through an irrevocable conveyance, approved by the Township Attorney, such as a recorded deed restriction, a conservation easement or through condominium documents. Such conveyance shall, at a minimum, include provisions to accomplish the following objectives with additional provisions as may be required to address any unique circumstances pertaining to the site in question:

- a. A clear designation of the entity, person(s) or agency to be perpetually responsible for the maintenance of the open space.
 - b. Standards for maintenance of the open space, which shall standards for the removal of trash or waste material within the open space, clean up of storm damage, or removal of diseased plant materials and related matters
 - c. A provision that provides the Township with the irrevocable right, but not the responsibility, to maintain such open space and to assess the costs therefore, including any legal or administrative costs, upon the owners of the open space, or the owners of the properties in the PUD, if such area is considered a general common element. The exercise of such right shall be at the sole discretion of the Township in the event it finds that open spaces are not adequately maintained, or are determined by the Township to be a public nuisance.
- C. PUD Perimeter Setbacks: No building envelope shall be located nearer to the perimeter boundary of the PUD than the required yard dimension in the underlying zoning district in accordance with the following requirements. In areas where the underlying zoning district is AG, RP, R-1A, R-1B or R-2, the following additional regulations shall apply to said PUD perimeter setback area:
- 1. No native or natural vegetation shall be removed from the PUD perimeter setback, except for that necessary for entrance streets or private roads. The Planning Commission may modify this requirement provided the applicant demonstrates that the clearing of existing vegetation would contribute significantly to the intent of this Chapter as described in Section 18.01.
 - 2. No grading or changes in topography shall be permitted, except as may be necessary to construct entrance streets or private roads, or provide screening as noted in subsection (3) below.
 - 3. The PUD perimeter setback may be reduced if a year-round, opaque, natural screen is present or provided for at least seventy (70%) percent of the lineal distance of the property line abutting any street and having a depth of at least twenty-five (25) feet. The natural screen shall be subject to the approval of the Planning Commission, shall have at least fifty (50%) percent opacity from the street view, and shall consist of existing vegetation, land forms, or landscaped areas using native or natural materials, or a combination thereof.
- D. Non-Residential Development Requirements:
- 1. Non-residential uses shall be integrated into the design of the PUD with complementary and coordinated architectural themes and site development elements, such as signs, landscaping, etc.
 - 2. Non-residential uses shall be permitted only if they will not materially alter the residential character of nearby neighborhoods and those within the PUD.
 - 3. All merchandise for display, sale or lease shall be located in areas noted on an approved site plan. All other materials must be kept entirely within an enclosed building(s) or otherwise screened from view from any off-site vantage point.

E. Driveway Access and Circulation:

1. Access points to the PUD shall be carefully planned to minimize congestion at intersections and to promote safe vehicular, pedestrian and non-motorized transit. The Planning Commission may require that the applicant provide a traffic impact study to demonstrate safe and efficient circulation within the PUD and on adjoining roadways.
2. Additional right-of-way shall be provided as determined by the Planning Commission to accommodate improvements to the existing arterial roadway system that are planned or required to mitigate traffic associated with the PUD.

F. Phased PUDs. The Planning Commission shall evaluate each phase of a proposed PUD to determine whether each phase is able to stand on its own as a viable development and a useful and desirable addition to the Township in the event subsequent phases are deferred or never implemented.

SECTION 18.04 - WAIVERS FROM STANDARDS

Requirements and standards contained in this Chapter may be modified or waived by the Planning Commission, provided that it finds:

- A. The objectives and intent of the Master Plan, this Chapter, and the underlying zoning district are better served by such modifications, rather than through the strict application of the requirements contained therein.
- B. The requested waiver will not increase the number of residential units above the maximum permitted in Section 18.03, (2).
- C. The requested waiver will not decrease the number of required parking spaces below the minimum required, unless a parking study is provided that, in the opinion of the Planning Commission requires such reduction.
- D. Appropriate traffic and pedestrian safety is insured.

SECTION 18.05 - OPTIONAL PRE-APPLICATION CONFERENCE

- A. A pre-application conference may be held with the Planning Commission for the purpose of determining the eligibility of the request for consideration as a PUD.
- B. A request for a pre-application conference shall be made to the Zoning Administrator who shall schedule a date and time with the Planning Commission. Prior to the pre-application conference, the applicant shall submit eleven (11) copies of a conceptual plan which shows the property location, boundaries, significant natural features, vehicular and pedestrian circulation, acreage, property dimensions, land use for the entire site, and anticipated number and density of dwelling units.
- C. The Planning Commission may converse with the applicant regarding the intent of the proposed PUD and it may make inquiries or suggest additional information that may be helpful in reaching a decision on the proposal. The Planning Commission may highlight possible issues or concerns but shall not render any opinion as to whether the application conforms with the intent for PUDs in Section 18.01, whether it qualifies under the minimum

requirements of Sections 18.02 and 18.03, or any other portion of this Chapter, and whether the general concept is consistent with the Master Plan until it has received and reviewed a complete application and held the required public hearing. In no case shall any statements made by the Planning Commission at a pre-application conference be construed as a representation concerning approval or denial of the PUD.

SECTION 18.06 - PUD APPLICATION AND PRELIMINARY DEVELOPMENT PLAN

Applicants seeking approval of a PUD shall submit a complete application and a preliminary development plan to the Zoning Administrator, who shall forward the materials for review to the Planning Commission, Township planner and engineer, fire department, and other applicable agencies and professionals. The PUD application shall include the following:

- A. A completed application form supplied by the Zoning Administrator.
- B. A density calculation indicating the number of dwelling units, and a narrative description of the benefits demonstrated to qualify the project for additional density. This element of the application shall include the parallel plan, if required under Section 18.03, 1, a, (3), or if elected by the applicant under Section 18.03, 1, a, (2).
- C. Payment of applicable fees, as established by the Township Board.
- D. A narrative statement describing:
 - 1. The objectives of the PUD and how it relates to the intent for PUDs, as described in Section 18.01;
 - 2. The conformance of the PUD with the Master Plan;
 - 3. The phases of the PUD and approximate time frame for each phase and how each phase will form a viable development that is useful and desirable on its own in the event the subsequent phases fail to materialize.
 - 4. All proposed deed restrictions, covenants, or similar legal instruments to be used within the PUD;
 - 5. The anticipated start and completion of construction;
 - 6. Location, type, and size of areas to be designated for common open space; and
 - 7. All sensitive lands regulated by the MDNRE or any other governmental agency, including the approximate square footage/acreage of major types of such natural features and a description of mechanisms proposed to protect such sensitive lands.
- E. Eleven (11) copies of a preliminary development plan shall be submitted. If the PUD is to be developed in phases, the preliminary development plan shall show all phases. The preliminary plan shall contain the following:
 - 1. The PUD's name, the applicant's name and signature, the name and address of the firm and individual who prepared the preliminary development plan, scale, and north arrow;
 - 2. Property lines, dimensions of all property lines, and size of the PUD and its individual phases, in acres;

3. Existing zoning of all lands within one-half mile of the PUD and the existing land use of all abutting properties;
 4. Existing natural features on the site including water, stands of trees, drainage ways, flood plains, wetlands, steep slopes, and similar features;
 5. Existing buildings and structures on the site;
 6. Proposed uses and their approximate locations;
 7. Illustration of area(s) proposed as permanent open space with the land area included and any features to be protected and amenities to be added.
 8. Illustration and legal description of existing and proposed easements
 9. Illustration and description of any existing encroachments on the property.
 10. Rights-of-way and pavement edges of existing streets abutting the PUD;
 11. Approximate locations of proposed access drives and streets within the PUD;
 12. Proposed walkways or pedestrian paths;
 13. Proposed method of providing water, sanitary sewer, and stormwater drainage facilities;
 14. Layout and typical dimensions of proposed lots;
 15. Approximate phases of the PUD;
 16. Proposed residential density by area or phase; and
 17. Location of building envelopes, clearance zones, sensitive lands and unconstrained lands.
- F. The Planning Commission may require additional information reasonably necessary to demonstrate compliance with the review standards and other requirements of this Chapter. Such information may include, but not be limited to, soil reports, hydrological tests, traffic studies, market analyses, wetland determinations, or other such evidence which shall be submitted by the applicant prior to consideration and a final decision on an application.

SECTION 18.07 - NOTICE AND PUBLIC HEARING FOR PUD

- A. Upon receipt of an application for PUD approval and a determination by the Zoning Administrator that the application is complete, the Zoning Administrator shall cause notice to be given, in accordance with the requirements for special land uses, as provided in sec. 17.02 D. The notice shall:
 1. Describe the nature of the proposed PUD;
 2. Describe the property which is the subject of the PUD application, by both legal description and Street address;
 3. State the time, date, and place of the public hearing; and
 4. State when and where written comments will be received concerning the application.
- B. Following notice, the Planning Commission shall hold a public hearing on the proposed PUD,

for the purpose of receiving public comment on the application. The applicant may meet informally with residents of the general area surrounding the proposed PUD site prior to the public hearing or even prior to submitting the PUD application to explain the development, answer questions, and make adjustments to the proposal to address concerns.

SECTION 18.08 - PLANNING COMMISSION DECISION

- A. Following the public hearing, the Planning Commission shall review the PUD request and development plan based on the following and shall approve, approve with conditions, or deny the PUD request. The Planning Commission shall articulate findings of fact and reasons for such decision, specifically citing appropriate standards and Sections of the Ordinance, and identifying those specific conditions, if any, it considers necessary. The Planning Commission shall consider at least the following factors in making its decision concerning the PUD request:
1. Conformance of the PUD with the Master Plan;
 2. Compatibility with the type, character, and density of existing and anticipated uses surrounding the site;
 3. Consistency with the intent and qualifying conditions of this Chapter in Sections 18.01 and 18.02, respectively, and;
 4. Conformance with the standards of Section 18.10, if a Final Development Plan is submitted with the PUD application.
- B. Conditions of Approval. Reasonable conditions of approval established by the Planning Commission shall meet all of the following requirements:
1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;
 2. Be related to the valid exercise of a police power and purposes which are affected by the proposed use or activity; and
 3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

SECTION 18.09 - FINAL DEVELOPMENT PLAN APPLICATION

Within two (2) years of the Planning Commission's approval of the PUD and the preliminary development plan, the applicant shall submit to the Planning Commission a request for final PUD approval. If a request for final approval is not submitted within two (2) years, the provisions of Section 18.15 shall apply. An application for final PUD approval shall consist of the following:

- A. A completed application form, supplied by the Zoning Administrator;
- B. Payment of a fee, as established by the Township Board;
- C. A narrative demonstrating compliance with the findings, review comments, and conditions, if

any, from the Planning Commission review of the preliminary development plan and a narrative explanation of the changes made to the final development plan in response to those items;

- D. Evidence that all required permits, other than building permits, have been applied for, as applicable, from County, State, and/or Federal agencies; and
- E. A site plan containing all of the information required in Section 19.03 however, individual detached single family dwellings need not be shown on the plan. For developments consisting of three (3) or more phases, a plan meeting the requirements of Section 18.06, F, may be submitted for the overall PUD and a detailed plan as required for final development plan shall be submitted for at least the first phase. Each subsequent phase shall be reviewed in the same manner.

SECTION 18.10 - PLANNING COMMISSION REVIEW OF FINAL DEVELOPMENT PLAN

- A. The Planning Commission shall review the final development plan in relation to its conformance with the preliminary development plan and the conditions, if any, of the PUD approval. If it is determined that the final development plan is not in substantial conformance to the preliminary development plan, the review process shall be conducted as a preliminary development plan review, in accordance with the procedures of Section 18.06 through Section 18.08 of this Ordinance.
- B. If the final development plan is consistent with the approved preliminary development plan, the Planning Commission shall review the final development plan in accordance with the criteria of Section 18.03.
- C. The Planning Commission shall prepare a report of its findings and shall approve, approve with conditions, or deny the final development plan.

SECTION 18.11 - PERFORMANCE GUARANTEE REQUIREMENTS

- A. In the interest of insuring compliance with the Zoning Ordinance provisions, protecting the natural resources and health, safety and welfare of the residents of the Township, and future users or inhabitants of an area for which a proposed PUD has been submitted, the Planning Commission, may require the applicant to obtain a performance guarantee as set forth herein. Provided, however, that the provisions of this Section 18.11 shall not apply to any Planned Unit Development or any phase of a Planned Unit Development involving fewer than ten (10) acres in area and without significant public utilities. The purpose of the performance guarantee is to:
 - 1. Insure compliance with the Zoning Ordinance by completion of improvements including, but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls and landscaping;
 - 2. Insure compliance with all conditions placed on the approved land use; and

3. Restore the land to its condition prior to the approval of the special land use permit authorizing a PUD in the discretion of the Township if the approved land use is not completed.
- B. Performance guarantee as used herein shall mean security of some sort, such as, but not limited to, a cash deposit, certified check, or irrevocable bank letter of credit to the benefit of the Township in a form approved by the Township Attorney and in an amount of the value of the improvements or construction permitted or called for in the approved phases of the PUD as determined by the Township.
 - C. By accepting a special land use permit authorizing a PUD, the applicant/land owner irrevocably authorizes the Township to enter upon the subject property to complete the improvements authorized by the permit or to restore the land to its condition prior to the approval of the variance or aforementioned permits in the event of a default by the applicant/land owner under this Ordinance. This authorization expires upon the completion of all the required improvements of the PUD as determined by the Township.
 - D Any performance guarantee posted in accordance with this Section 18.11, shall not be reduced until the Zoning Administrator confirms that not less than sixty percent (60%) of the required improvements have been completed. At that time, the amount of the performance guarantee shall be reduced by not more than seventy-five percent (75%) of the value of the improvements completed, as determined by the Zoning Administrator. In no event shall the amount of the performance guarantee be permitted to fall below twenty-five percent (25%) of the original total until all required improvements have been completed, including official approval for occupancy, as determined by the Zoning Administrator.
 - F. Upon the satisfactory completion of the improvement for which the performance guarantee was required, as determined by the Zoning Administrator, the Township Treasurer shall return to the applicant the performance guarantee deposited.

SECTION 18.12 - RESERVED

SECTION 18.13 - PUD AGREEMENT

Prior to issuance of any building permits or commencement of construction on any portion of the PUD, the applicant shall enter into a development agreement with the Township setting forth the applicant's obligations with respect to the PUD. The development agreement shall be prepared by the applicant in recordable form and shall be subject to review and approval by the Township Attorney. The Agreement shall describe all improvements to be constructed as part of the PUD and shall incorporate, by reference, the final development plan with all required revisions, other documents which comprise the PUD, and all conditions attached to the approval of the PUD. The agreement shall also establish the remedies of the Township in the event of default by the applicant in carrying out the PUD, and shall be binding on all successors in interest to the applicant. All documents shall be executed and recorded in the office of the Berrien County Register of Deeds, at the expense of the applicant.

SECTION 18.14 - CHANGES TO AN APPROVED PUD

Changes to an approved PUD shall be permitted only under the following circumstances.

- A. The holder of an approved PUD final development plan shall notify the Zoning Administrator, in writing, of any desired change to the approved PUD.
- B. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the PUD, nor any specified conditions imposed as part of the original approval. Minor changes include the following:
 1. Reduction of the size of any building, except for buildings considered important to the project theme or amenities of the development, in the judgment of the Township
 2. Reduction of the size of any sign;
 3. Movement of buildings and/or signs by no more than ten (10) feet;
 4. Landscaping approved in the final development plan that is replaced by similar landscaping to an equal or greater extent;
 5. Changes in floor plans, of up to five (5%) percent of the total **floor area**, which do not alter the character of the use or increase the amount of required parking;
 6. Internal rearrangement of a **parking lot** which does not affect the number of **parking spaces** or alter access locations or design;
 7. Changes required or requested by the Township, Berrien County, or other State or Federal regulatory agency in order to conform to other laws or regulations unless such changes have the potential to impact adjoining properties; or
- C. A proposed change not determined by the **Zoning Administrator** to be minor shall be submitted by the applicant as an amendment to the PUD and shall be processed in the same manner as the original PUD application, including both preliminary and final plan review.

SECTION 18.15 - TIME LIMIT FOR APPROVED PUD

Each PUD shall be under construction within two (2) years after the date of approval of the PUD final development plan, except as noted in this Section.

- A. The **Planning Commission** may grant extensions of up to (1) year in duration if the applicant applies for such extensions prior to the date of the expiration of the PUD or any previously-authorized extensions and provided that:
 1. The applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant;
 2. The PUD requirements and standards, including those of this Ordinance and the **Master Plan**, that are reasonably related to the development have not changed; and
 3. The conditions affecting the original approval, including the land uses and related conditions in the vicinity of the site have not changed significantly since the original approval.

B. If any of the provisions of Section 18.15, A, are not fulfilled, or if a previously-approved extension has expired without meaningful commencement of construction, the PUD approval shall be null and void.

SECTION 18.16 - EXISTING PLANNED UNIT DEVELOPMENTS

Any planned unit development that has been approved by the Township under previous versions of this Zoning Ordinance shall continue to be occupied, used and developed in accordance with the provisions in effect when approval was granted. However, after the effective date of the ordinance adopting this Section, any changes or modifications to such previously-approved PUDs shall be considered and reviewed in accordance with the requirements and procedures of this Chapter.

7. SEVERABILITY.

If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The Township Board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

8. EFFECTIVE DATE.

This Ordinance shall become effective eight (8) days after publication.

NILES CHARTER TOWNSHIP

Date: _____

By: _____
Jim Kidwell, Supervisor

Date: _____

By: _____
Marge Durm-Hiatt, Clerk

Published Date: _____, 2010

Effective Date: _____, 2010