

## THE MORAVIAN PUD DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 100 North Fifth Avenue, Ann Arbor, Michigan 48107, hereinafter called the CITY; and MDC Acquisitions, a Michigan Limited Liability Company, with principal address at 706 W. Hazelhurst St., Ferndale, Michigan, 48220, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as The Moravian Planned Unit Development, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Moravian Planned Unit Development, and desires PUD Site Plan and development agreement approval thereof, and

WHEREAS, the PROPRIETOR desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETORS will install these improvements prior to any permits being issued.

### THE PROPRIETOR(S) HEREBY AGREE(S):

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water and sanitary sewer mains, private storm water management systems, sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the PROPRIETOR fails to construct the Improvements, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR, if the PROPRIETOR does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units if any, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public improvements set forth in Paragraph P-1 above have been completed in accordance with the

specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5) To install all water mains, storm sewers, sanitary sewers and public streets, through the first course of asphalt, pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to South Fourth Avenue, South Fifth Avenue and East Madison Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along said street frontages when such improvements are determined by the CITY to be necessary.

(P-7) To indemnify and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the PROPRIETOR, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-8) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the public improvements.

(P-9) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the PROPRIETOR to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the PROPRIETOR one year after the date of acceptance by the CITY.

(P-10) To construct, repair and/or adequately maintain on-site storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-11) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-12) To convey to the CITY prior to the issuance of building permits, an easement for public use of the pocket park as shown on the approved site plan.

(P-13) To install signage, acceptable to the CITY Community Services Area, prior to issuance of the certificate of occupancy, indicating the existence and permitted public use of the pocket park as shown on the approved site plan.

(P-14) To maintain the pocket park as shown on the approved site plan in neat and orderly condition, and in good repair.

(P-15) Prior to the application for and issuance of any Certificate of Occupancy, to enter into an agreement with the CITY, with terms acceptable to the CITY, to provide a minimum of 12 units of affordable housing for lower income households consistent with terms in the PUD Supplemental Regulations for the site and consistent with all City ordinances, policies and regulations regarding affordable housing.

(P-16) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the PROPRIETOR proposes any changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes shall be addressed in the manner provided in the PUD Supplemental Regulations.

(P-17) Prior to issuance of any permits, to apply for and obtain a Conditional Letter of Map Revision (CLOMAR) from the Federal Emergency Management Agency for modifications to the modernized floodplain boundaries on the site, and to furnish to the CITY copies of the CLOMAR. Prior to issuance of any Certificates of Occupancy, to apply for and obtain a Letter of Map Revision (LOMAR) from the Federal Emergency Management Agency for modifications to the modernized floodplain boundaries on the site, and to furnish to the CITY copies of the LOMAR and a completed Elevation Certificate.

(P-18) The PROPRIETOR shall apply to earn a LEED Certified rating for New Construction from the United States Green Building Council within 180 days after the issuance of the final Certificate of the Occupancy, but in no case later than 360 days from the issuance of the first Certificate of Occupancy. If PROPRIETOR does not submit a complete application by this date, the PROPRIETOR shall pay to the CITY a penalty of \$500 per day. If the PROPRIETOR fails to achieve the LEED Certified rating, the PROPRIETOR shall pay a penalty to the City according to the following formula:

$P = \left[ \frac{LCM - CE}{LCM} \right] \times CV \times 0.0375$ , where P is the amount of the penalty, LCM is the minimum credits needed to earn a LEED Certified rating, CE is the credits earned as documented by the US Green Building Council, and CV is the Construction Value as set forth on building permits for the site.

(For example, if the developer achieves 21 out of 26 required points, the penalty under this formula is  $P = \left[ \frac{26 - 21}{26} \right] \times \$6,500,000 \times 0.0375 = \$46,875$  given an example Construction Value of \$6,500,000.) PROPRIETOR shall make all payments under this paragraph to the City within 45 days of receipt of a written demand by the CITY.

(P-19) Prior to application for and issuance of certificates of occupancy, to disconnect 14 footing drains from the sanitary sewer system in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). The CITY agrees to provide PROPRIETOR with a certificate of completion upon PROPRIETOR'S submittal of approved and final closed-out permits to the CITY Public Services Area.

(P-20) To offer the initial and all subsequently available leases for the Live/Work Spaces as shown on the approved site plan to residents of the development before offering to the general public in support of the live/work concept included in the Supplemental Regulations.

(P-21) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development improvements, and within one month after completion or abandonment of construction.

(P-22) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, PROPRIETOR shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-23) PROPRIETOR is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-24) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved development agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or development agreement.

(P-25) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-26) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

**THE CITY HEREBY AGREES:**

- (C-1) In consideration of the above undertakings, to approve the Moravian PUD Site Plan.
- (C-2) To provide timely and reasonable CITY inspections as may be required during construction.
- (C-3) To record this agreement with the Washtenaw County Register of Deeds.

**GENERAL TERMS**

Both the PROPRIETOR and the CITY agree as follows:

(T-1) This agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

The South 45 feet of the West 93 feet of Lots 17 and 18, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [201 East Madison Street]; and,

The South 76 feet of the East 40 feet of Lot 17, Block 5 south, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [211 East Madison Street]; and,

A part of lot 16, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records, more particularly described as: Commencing at the Southwest corner of said Lot 16; thence running East on the North line of Madison Street 42 feet; thence North parallel with the West lot line 65 ½ feet; thence West parallel with Madison Street 42 feet; thence South on the West line of Lot 16, 65 ½ feet to the Place of Beginning [215 East Madison Street]; and,

The South 8 feet of Lot 14 and all of Lots 15 and 16, except the South 65.5 feet, of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [554 South Fifth Avenue]; and,

Commencing at the Southeast corner of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records; thence North on the West line of Fifth Avenue, 65 ½ feet; thence Westerly to a point in the West line of Lot 16 of said Block, 65 ½ feet North of the North line of Madison Street; thence South to Madison Street; thence Easterly along the North line of Madison Street to the Place of Beginning, in the City of Ann Arbor, Washtenaw County, Michigan, excepting and reserving therefrom the west 42 feet thereof, sold by George Otto by Deed dated September 21, 1908 and recorded September 21, 1908 in Liber 172 of Deeds, Page 223, Washtenaw County Records, being a part of Lots 15 and 16, Block 5 South, Range 5 East, of said Maynard and Morgan's Addition [558 South Fifth Avenue]; and,

The South half of Lot 19 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, reserving 3 feet in width by the entire length along the East and West centerline of said Lot on the South side of said centerline and conveying 3 feet in width along the North side of said centerline. Such 6 feet in width to be used for a right of way by the parties owning said Lot or a part of it (and other lands),

according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [547 South Fourth Avenue]; and,

The North 44 feet of Lots 17 and 18 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [551 South Fourth Avenue]; and,

Commencing at a point in the East line of South Fourth Avenue, 44 feet South of the Northwest corner of Lot 17 in Block 5 South, Range 5 East; thence running East 92 feet parallel with the North line of Lots to a point 40 feet West of the West line of Lot 16; thence South parallel with the West line of Lot 16, 40 feet (measured 33.44 feet); thence West parallel with the North line of Lots to the East line of South Fourth Avenue; thence North on the East line of said Avenue to the Place of Beginning, being a part of Lots 17 and 18 in Block 5 South, range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [553 South Fourth Avenue].

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the PROPRIETOR, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

\_\_\_\_\_  
  
\_\_\_\_\_

CITY OF ANN ARBOR, MICHIGAN  
100 North Fifth Avenue  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Roger W. Fraser, City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

MDC Acquisitions, LLC  
706 W. Hazelhurst St.  
Ferndale, MI 48220

Witness:

\_\_\_\_\_

By: \_\_\_\_\_  
Jeffrey P. Helminski, Managing Member

STATE OF MICHIGAN    )  
  ) ss:  
County of Washtenaw    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

\_\_\_\_\_  
NOTARY PUBLIC  
County of Washtenaw, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

STATE OF MICHIGAN    )  
  ) ss:  
County of Washtenaw    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared Jeffrey P. Helminski, managing member of MDC Acquisitions, LLC, a Michigan limited liability company, to me known to be the person who executed the foregoing instrument, and to me know to be the managing member of said limited liability company, and acknowledged that he executed the foregoing instrument as the free act and deed of said limited liability company by its authority.

\_\_\_\_\_

NOTARY PUBLIC  
County of Washtenaw, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Wendy Rampson, Planning Manager  
City of Ann Arbor Planning & Development Services  
Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734)794-6265

DRAFT