

TRAYERWOOD APARTMENTS DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Traverwood Apartments LLC, a Michigan limited liability company, with principal address at 115 Depot Street, Ann Arbor, MI 48105, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as Traverwood Apartments, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Traverwood Apartments, and desires 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 PROPRIETOR will install these Improvements prior to any permits (with the exception of permits for the Improvements) 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, public and private storm water management systems and sidewalks, as shown on the approved site plan, ("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.

(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 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.

(P-5) To grant an easement to the CITY for existing sanitary sewer mains as shown on the approved site plan and the final approved construction plan, subject to City Council approval. PROPRIETOR shall, at a minimum, complete a video inspection on the existing 8 inch and 10 inch sanitary sewer mains located on the Traverwood Apartments property, and provide evidence to the CITY'S Public Services Area that the mains are in a condition acceptable to the CITY. PROPRIETOR shall complete any repairs required by the CITY prior to the request for and issuance of any certificates of occupancy. PROPRIETOR shall submit a legal description and survey drawing for the easement prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form acceptable to the CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy.

(P-6) To provide by phase, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public. At the request of the PROPRIETOR, the CITY will provide and install all street name signs and invoice the PROPRIETOR for actual cost of installation.

(P-7) To install by phase all water mains, storm sewers and sanitary sewers, 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-8) To indemnify, defend 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-9) 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 an 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 Improvements.

(P-10) Existing woodland, landmark, and street trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of Certificate of Occupancy. Existing woodland, landmark, and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public improvements or granting of Certificate of Occupancy, shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-11) 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-12) 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-13) 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-14) Prior to the issuance of any permits, to submit to the CITY Land Development Coordinator for review and approval a Wetland Monitoring Plan, to implement the plan concurrently with construction of the site improvements, and to submit an annual report regarding implementation of the Wetland Monitoring Plan recommendations to the CITY following issuance of certificates of occupancy.

(P-15) To construct all wetland mitigation as required by the Wetland Mitigation Plan, dated September 10, 2013, before issuance of building permits.

(P-16) 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-17) Prior to application for and issuance of certificates of occupancy, to disconnect 52 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the Guidelines for Completion of Footing Drain Disconnections, Table A, and adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"). In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and PROPRIETOR agree

to adjust the number of footing drains to be disconnected in accordance with the Guidelines. PROPRIETOR may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis at the Discretion of the CITY Public Services Area.

(P-18) To grant an easement to the CITY for public pedestrian and non-motorized access connecting Stapp Nature Area to Leslie Woods as shown on the approved site plan, subject to City Council approval. The easement shall be open and passable to the public, shall be 10 feet in width (except the northwest corner of the site adjacent to Building 15 where it shall be 5 feet in width), and no sign or other impediment may be placed in or near the easement that limits or purports to limit public pedestrian and non-motorized access. PROPRIETOR shall submit a legal description and survey for the easement prior to the request for and issuance of the first certificate of occupancy, and the easement shall be granted to the CITY in a form acceptable to the City attorney. The easement shall be accepted by City Council prior to the request for and issuance of the final certificate of occupancy for Phase 1. PROPRIETOR shall install the pathway within the easement as shown on approved site plan prior to the request for and issuance of the first certificate of occupancy for Phase 1.

(P-19) 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(s) signing below on behalf of PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-20) 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-21) 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-22) 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 Traverwood Apartments 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:

Commencing at the SW Corner of Section 15, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N 88°23'50" E 1313.45 feet along the south line of said Section 15 to the POINT of BEGINNING,

Thence N 00°54'42"W 1569.68 feet along the West line of the E 1/2 of the SW 1/4 of said Section 15;

Thence N 89°05'18" E 262.42 feet;

Thence N 18°10'29" E 130.16 feet;

Thence S 71°49'31" E 264.02 feet;

Thence along the westerly right-of-way line of Traverwood Drive (70' wide) in the following two (2) courses:

S 23°47'10" W 151.36 feet;

Southerly 837.90 feet in the arc of a curve to the left, radius 742.98 feet, central angle 64°36'57", chord S 08°31'31" E 794.20 feet;

Thence S 32°22'33" W 284.63 feet;

Thence S 52°10'15" E 570.98 feet;

Thence S 84°07'06" W 127.26 feet;

Thence S 00°45'01" E 66.22 feet;

Thence S 88°23'50" W 758.70 feet along the south line of said Section 15, to the POINT OF BEGINNING. Being a part of the SW 1/4 of said Section 15 and containing 19.82 acres of land, more or less. Being subject to easements and restrictions of record, if any.

(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.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

TRAVERWOOD APARTMENTS LLC
115 Depot St.
Ann Arbor, MI 48104

By: _____
Name, Title

