

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of March 18, 2008

SUBJECT: North Sky Annexation, Zoning, and Planned Project Site Plan (west side of Pontiac Trail, south of Dhu Varren Road, including 2801, 2735 and 2701 Pontiac Trail) File Nos. 9162J9.1, .2 and .5b

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Maple Cove Annexation and Zoning from TWP (Township District) and R3 (Townhouse District) to R1D (Single-Family Dwelling) and R4A (Multiple-Family Dwelling).

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Maple Cove Planned Project Site Plan and Development Agreement.

STAFF RECOMMENDATION

Staff recommends that the North Sky annexation and zoning petitions be **approved** because the area to be annexed is within the ultimate City limits and the proposed zoning classifications are in keeping with the corresponding future land use recommendations for the areas.

Staff recommends that the North Sky planned project site plan petition be **tabled** to allow staff additional time to confirm that revised plans satisfactorily address previous outstanding comments.

LOCATION

This site is located on the west side of Pontiac Trail, south of Dhu Varrren Road, including 2801, 2735 and 2701 Pontiac Trail (Northeast Area, Huron River Watershed).

DESCRIPTION OF PETITION

General Description – The petitioners seek to expand a previously approved planned project by annexing three additional parcels of 1.2 acres, 1.5 acres and 1.9 acres to create a site with a total of 31 acres. The 1.9-acre parcel at 2701 Pontiac Trail is proposed to be zoned R1D Single-Family Dwelling District. The remaining two parcels, addresses 2735 and 2801 Pontiac Trail, are proposed to be zoned R4A Multiple-Family Dwelling District. Also, the previously approved development site is proposed to be rezoned from R3 Townhouse Dwelling District to R4A.

Number of Units, Density – Twelve single-family detached dwelling units, and two single-family dwelling units above garages, are proposed to be constructed on the 1.9-acre parcel in the northeast corner of the site. No additional dwelling units are proposed to be constructed on the

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1.2 and 1.5-acre parcels; that area will be open space that could be used for future development. In all, the proposed site plan includes 196 dwelling units as follows:

- 92 single-family detached dwelling units
- 2 single-family dwelling units above garages
- 62 two-family dwelling units (in 31 duplex buildings)
- 40 multiple-family dwelling units (in 10 buildings)

The proposed site plan includes 14 more units than the previously approved plan, 12 more single-family detached units and two single-family units above garages.

At this time, the gross density of the development is six dwelling units per acre and the net density (excluding the area of public and private streets) of the portions zoned R1D and R4A is each 7.2 dwelling units per acre. Based on size of the site, up to 240 dwelling units in total would be permitted. If fully developed by a future site plan submittal to construct dwellings on the portion of the site bounded by Pontiac Trail, Mial Street, Letitia Street, and North Sky Drive, the gross density would be 7.5 dwelling units per acre. The maximum permitted density in the R1D district is eight dwelling units per acre, and ten dwelling units per acre in the R4A district.

Site Design – As before, the petitioner describes the proposed site design as a traditional neighborhood featuring elegant architectural styling reminiscent of small-town Midwestern architecture of the late 19th century to pre-World War II period. The design is intended to encourage pedestrian activity and provide a greater sense of community. A variety of housing types and sizes are proposed and are intended to be owner-occupied. Homes are proposed to front the streets with parking garages accessed from alleys at the rear. Garages are proposed to be located underneath the units of the multiple-family buildings. No parking lots are proposed. Additional parking is provided along one side of the streets, public and private.

Planned Project Modifications – The petitioner has requested planned project modifications to deviate from the R4A district height and placement (setbacks and building separation) standards. The multiple-family buildings are proposed to be 34 feet in **height**, whereas the maximum height limit in the R4A district is 30 feet. The height modification is necessary to incorporate the garages underneath the multiple-family buildings. Parking spaces underneath buildings reduces impervious surfaces, uses land more efficiently, eliminates the need for parking lots, increases security and is a convenience to residents, as indicated by the petitioner. All proposed buildings along the west side of Letitia Street and the north side of Mial Street, both public streets, do not meet the minimum required front **setback** distances. Buildings along Letitia Street are generally set back 9 to 13 feet from the right-of-way; the minimum front setback in the R4A district is 40 feet. Buildings along Mial Street are generally set back 10 to 24 feet; the minimum front setback in the R1D district is 25 feet. **Additional setbacks** for some buildings are also required due to their height or length. The 34-foot tall multiple-family buildings should be set back an additional foot due to their height, for a total minimum required front setback from Letitia Street of 41 feet. Where the single-family dwellings have been placed ‘on their sides’ along the north and south side property lines, a bit more than one foot of additional setback is required due to the length of the building parallel to the property line, for a total of 21 feet. In general, the proposed **building separation** is ten feet between adjacent single-family and/or two-family dwellings and adjacent multiple-family buildings. A minimum of 20 feet is required in the R4A district.

The planned project modifications requested at this time are consistent with the planned project modifications requested by the previous site plan petition. Staff continues to support the modification request, see the Planned Project section of this staff report for further analysis.

Access and Circulation – As previously, two access points from Pontiac Trail are proposed to serve the development. Two new public streets are proposed to intersect with Pontiac Trail, Mial Street on the north half of the site and North Sky Drive on the south half of the site. Approximately 250 feet west of Pontiac Trail, each of these new public streets intersects with a third new public street, Letitia Street, which runs parallel to Pontiac Trail. All streets west of Letitia Street are proposed to be private. The new public streets, like before, are proposed to have narrower rights-of-way, 45 feet in width as opposed to 66 feet, to promote efficient use of land. Sight distance measurements were determined to be acceptable for the new street intersections. Some vegetation is proposed to be removed near the new street intersections to improve egress, including a 34-inch oak in the Pontiac Trail right-of-way at Mial Street.

Sidewalks are proposed along all streets, public and private, and located within easements as they cannot be accommodated in the narrower rights-of-way. Pedestrians will not notice any difference between the sidewalks within the North Sky development and other sidewalks around the City.

Traffic Impacts – A traffic impact report was prepared in 2004 for the original North Sky petition (then an area plan) that anticipated 192 dwelling units. The number of dwelling units proposed by the site plan petition did not significantly differ and a new traffic study was not required. The impact report found acceptable levels of service at the following intersections: Pontiac Trail/Dhu Varren Road, Pontiac Trail/Barton Drive, Nixon Road/Dhu Varren Road, and the new north and south access points to the site. Additional information was also provided at the request of the Public Services Area regarding the level of service (LOS) of traffic conditions at the Plymouth Road/Green Road intersection, which indicated that intersection operated below an acceptable LOS under existing conditions. The petitioner agreed to contribute towards improvements to the Plymouth Road/Green Road intersection.

The petitioner was asked to confirm that the 2004 traffic impact report was still valid, and updated to consider the increased number of dwelling units. An updated traffic impact report has been provided and is being reviewed by staff. The petitioner has already agreed to abide by the terms of the previous development agreement, increasing the contribution towards improvements proportionally if necessary due to the increased number of dwelling units.

Natural Features – No wetlands, watercourses or 100-year floodplains exist on the site or in the immediate vicinity. Approximately 2.6 acres of low-level concern slopes are proposed to be impacted, which requires no mitigation. The impacted areas have between ten and 15 percent slopes or are man-made. The site did contain numerous landmark trees and woodlands, including 81 landmark trees¹. The site has already been cleared of a total of 3,243 caliper inches of woodland trees and 460 caliper inches of landmark trees. There are no landmark trees or woodland areas on the parcels to be added to the original site, and no additional trees are proposed to be removed for the expanded development. For the 3,703 caliper inches already removed from the site, 1, 851½ caliper inches of replacement trees are required and proposed. Approximately 80 percent of the required replacement amount is shown on the landscape plan to be planted in accordance with the development phases. Equal proportions of these replacement trees will be located in each of the eight proposed phases. The remaining 20 percent of the replacement trees are not shown on the landscape plan but will be installed in

¹ Please refer to the North Sky Planned Project Site Plan staff report dated April 19, 2005 for a complete description of the landmark trees and woodland areas that existed on the site if desired. Copies are available upon request.

equal proportions in each phases after buildings have been constructed. This will enable trees to be installed in the most attractive locations and benefiting the future residents. Notes have been added to the site plan and a provision has been added to the development agreement that staff shall approve the final locations of all trees prior to planting and 'as-built' plans shall be provided for accurate documentation of the location for all required mitigation trees.

Storm Water Management – Three storm water detention facilities are proposed. All are located at the southern edge of the site and include a western pond (2.25 acres in size), a central pond (four acres) and an eastern pond (1.25 acres). The location of the detention outlets was determined, in part by the Washtenaw County Drain Commissioner's Office. The petitioner also proposes a series of bioswales near the central detention pond to slow and help clean storm water.

Open Space – Over 71 percent of the site has been preserved as open space; a minimum of 65 percent is required in the R4A district. There is no minimum open space requirement in the R1D district. Community Services Area staff, including Parks & Recreation Services and Planning & Development Services, have previously and continue to request that neighborhood parkland be dedicated as part of this site plan petition. The Parks and Recreation Open Space Plan (PROS) recommends a neighborhood park for this area to accommodate the needs of the residents of this development project, as well as existing and future residents in the area. A neighborhood park and land to achieve a regional trail along the western edge of the site are also recommended. The Non-Motorized Transportation Plan (No-Mo) supports the PROS recommendation for a regional pedestrian path along the western edge of the site with one of its own. Such a path would be part of a greenway system that would provide a pedestrian linkage to the Huron River.

Two central triangular-shaped "community open spaces" of 0.8 acre and 0.83 acre in size are proposed. Staff have previously, and continue, to note that private community open space tends to discourage anyone but North Sky residents from using them and may even discourage some North Sky residents from using them. As no play equipment is proposed, the open spaces could remain lawn or other low maintenance use. Additionally, the triangular shape of both areas limits design flexibility. It is likely that North Sky residents, in the future, will request that one or both of these spaces be acquired by the City. However, the configuration limits the public usefulness and City acquisition is very unlikely. Staff, then and now, has suggested redesigning the site to an even more traditional grid pattern than the 'traditional' neighborhood design proposed, consolidating the two community open spaces and shifting some of the dwellings to opposite sides of the street. This would enable land entirely bounded by streets and could provide a single, large park that could support a variety of active recreational elements and uses. A single, large park would be more likely to be acquired or accepted by the City and could facilitate game courts, sports fields and/or play equipment. The petitioner has continually indicated a preference for smaller open spaces that can accommodate gardens and picnic areas. Most recently, the petitioner has expressed they have no desire to redesign the neighborhood layout as engineering and construction plans have already been prepared.

A recreational trail easement, encompassing 0.68 acre across the northeast corner of the site, is proposed. While facilitating the recommendations of the PROS and No-Mo Plans, staff have and continue to support dedicating this area to the City for parkland. Staff believe dedication of the 0.68 acre across the northeast corner to be of utmost importance, even more than reconfiguring the triangular community open spaces.

Affordable Housing – The petitioner had previously and still agrees to provide a contribution of \$1,000 per dwelling unit to the City's Affordable Housing Trust Fund. Affordable housing

contributions are not required for this development, but when proposed can be a benefit and considered to meet one of the planned project standards of approval.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Single-Family Residential	TWP (Township District)
EAST	Single-Family Residential, Industrial Facility	TWP
SOUTH	Vacant Land (Approved for Multiple-Family Residential Use)	R4A (Multiple-Family Dwelling District)
WEST	Vacant Land (Part of Approved Site Plan, to be Used as Open Space), M-14 Expressway	R4A

COMPARISION CHART

		EXISTING	PROPOSED		REQUIRED	
Zoning		R3 (Townhouse) and TWP	R4A and R1D		R4A and R1D	
Gross Lot Area		31.77 ac. gross 29.34 ac. net [excluding ROW] (1,278,050 sq ft)	1,203,266 sq ft	75,011 sq ft	217,800 sq ft MIN	5,000 sq ft MIN
Lot Area per Dwelling Unit		Not applicable	6,611 sq ft	6,357 sq ft	4,300 sq ft MIN	5,000 sq ft MIN
Open Space		Not applicable	71.7%	Undetermined	65% MIN (including 300 sq ft per dwelling unit)	None
Setbacks	Front	Not applicable	9 ft (min) to Letitia St	50 ft Pontiac Trail 10 ft (min) Mial Street	40 ft MIN (plus additional for excess height, width)	25 ft MIN
	Side	Not applicable	20 ft to north and south sides	21 ft (min) to north side	20 ft MIN (plus additional for excess height, width)	3 ft MIN
	Rear	Not applicable	82 ft (min) to west side	70 ft to west side	40 ft MIN (plus additional for excess height, width)	30 ft MIN
Height		1 – 2 stories	34 ft	24 ft	30 ft MAX	30 ft MAX
Vehicle Parking		Not applicable	240 spaces (322 garage spaces, 53 surface spaces) 144 on-street spaces also provided (not counted toward requirement)		Single-family – 1 space per dwelling unit MIN Multiple-family – 2 spaces per dwelling unit MIN	
Bicycle Parking		Not applicable	322 Class A spaces in garages		Single-family – none Multiple-family – 1 space per 5 dwelling unit MIN	

Shading indicates planned project modifications required and requested.

HISTORY

An aerial photograph from 1947 shows the site used for farming. Most trees were confined to hedgerows along the farm fields. Based on the apparent age of some hedgerows, the photo suggests this area was farmed since the 19th century. A 1960 aerial photo shows that the slopes on the northeast side of the site were created by human activity, probably related to the construction of the M-14 expressway. Although in 1960 most of the site was farm and pasture land, some trees are seen growing in scattered areas.

Twenty-six acres of the site were annexed and zoned R3 Townhouse Dwelling District through the Arbor Ridge Annexation, Zoning and Area Plan petition in 2004. On June 6, 2005, a planned project site plan was approved under the name North Sky for 182 dwelling units. An administrative amendment to the North Sky Planned Project Site Plan was approved on April 3, 2006 to re-arrange some of the building locations (no additional units were proposed nor approved). Shortly after the North Sky petition was approved, the site was cleared of trees and vegetation in anticipation of beginning construction; however, the site was never graded and remains as cleared, ungraded land today.

PLANNING BACKGROUND

The Northeast Area Plan recommends that the majority of the site, all but the northern 1.9-acre parcel proposed to be annexed, contain residential uses at a gross density (excluding existing and proposed rights-of-way) of seven to ten dwelling units per acre. A mixture of housing types is encouraged, including single-family detached homes, duplexes, attached townhouses and multiple-family stacked units. As mentioned in the Description of Petition section of this report, the Northeast Area Plan reiterates the PROS recommendation for a neighborhood park.

Traffic volume and congestion was a major concern of the Planning Commission and neighborhood residents for the original North Sky development. Staff provided a comparison of then-recent traffic counts along Pontiac Trail with other two-lane minor arterial roads in the City. The average daily traffic volumes were based on count taken at various times over the 7.5 years preceding the original North Sky development summarized by the Washtenaw Area Transportation Study.

<u>Minor Arterial Road</u>	<u>Date of Count</u>	<u>24-hr Count</u>
Pontiac Trail (south of Dhu Varren Road)	6/6/00	4,030
Dexter Road (east of Maple Road)	10/30/01	7,034
Liberty Street (east of Seventh Street)	10/30/01	9,666
Miller Avenue (west of Seventh Street)	11/23/98	11,596
Scio Church Road (west of Main Street)	5/13/98	11,792
Nixon Road (north of Huron Parkway)	10/01/01	11,994
Fuller Road (west of Huron Parkway)	10/21/97	17,530

Staff believes these counts continue to accurately characterize the general traffic conditions for these minor arterial roads. Pontiac Trail experiences relatively low traffic volumes compared to other similar streets in the City.

PLANNED PROJECT STANDARDS

Planned project approval is requested to allow reduced front and side setbacks, both from the normal minimum dimensions and from the additional setback requirements due to building height and length, increased building height and reduced building separation. The petitioner

states that these modifications will help to achieve the objectives of the development program by enabling a higher efficiency of design, pedestrian orientation and a traditional neighborhood design.

Based upon compliance with the following standards, the Planning Commission may recommend approval, and City Council may approve modifications of the area, height and placement regulations of the Zoning Chapter in the form of a planned project site plan: (Petitioner comments are in plain type; *staff comments are in italics.*)

1. The lot(s) included in the planned project must meet the minimum gross lot size requirement of the zoning district in which they are located.

The minimum lot size has been met by this proposal.

Both the portion of the site to be zoned R4A and the portion to be zoned R1D exceed the minimum lot size of the district. Further, more than the minimum lot area per dwelling unit for each district has been provided.

2. The proposed modifications of zoning requirements must provide one or more of the following:

- a) **Usable open space in excess of the minimum requirement for the zoning district.**
- b) **Building or parking setback(s) in excess of the minimum requirement for the zoning district.**
- c) **Preservation of natural features that exceeds ordinance requirements, especially for those existing features prioritized in the land development regulations as being of highest and mid-level concern.**
- d) **Preservation of historical or architectural features.**
- e) **Solar orientation or energy conserving design.**
- f) **An arrangement of buildings which provides a public benefit, such as transit access, pedestrian orientation, or a reduced need for infrastructure or impervious surface.**
- g) **Affordable housing for lower income households.**
- h) **Permanent open spaces of 20 percent or more in any low-density residential district.**

The arrangement of the buildings allows for a public benefit in pedestrian lifestyle, and the project provides open space in excess of the requirements.

The proposed development provides slightly more open space, and more active open space per dwelling unit, than the minimum requirement (a, above). The proposed development has the effect of greater front setback from Pontiac Trail, particularly the single-family zoned area in the northeast corner, which has a front setback from Pontiac Trail of 45 feet, where a minimum of 25 feet is required (b, above). Staff agrees the arrangement of buildings provides better pedestrian orientation and a reduced need for infrastructure compared to a more typical design (f, above).

3. The planned project shall be designed in such a manner that traffic to and from the site will not be hazardous to adjacent properties.

Traffic flows shall not be hazardous and will be harmonious with existing patterns.

As noted elsewhere in this report, the location of the two access points meets sight distance and spacing requirements for street intersections. The projected traffic volume generated by the proposed development will not be hazardous to adjacent properties and the petitioner has agreed to contribute to improvements at a major intersection.

4. The proposed modifications shall be consistent with the proper development and use of adjacent land and buildings.

The proposed development and modifications will not have any adverse impacts on adjacent properties.

The types and styles of residential units proposed are consistent with those found in the area and the modifications are in keeping with the established development patterns of adjacent land.

5. Required off-street parking and landscaping must be provided in accordance with the provisions of Chapters 59 and 62.

Parking and landscaping are consistent with all applicable ordinances.

6. The standards of density, allowable floor area and required usable open space for the zoning district(s) in which the project is located must be met.

The standards for density, floor area and open space are met or exceeded by this proposal.

7. There shall be no uses within the proposed project which are not permitted uses in the zoning district(s) in which the proposed project is to be located.

The proposed use is consistent with the zoning district.

SERVICE UNIT COMMENTS

Land Development – Staff has provided comments to the petitioner to correct minor items regarding construction and landscape plan details shown on the plan. Revised plans have been submitted and are being reviewed.

Systems Planning – Revised plans have been submitted in response to previous comments. Staff recommends tabling until it is confirmed that the revised plans satisfactorily address the previous comments.

Transportation – The updated traffic impact study is still being reviewed to determine if any additional traffic mitigation contribution is necessary.

Planning & Development – Several staff comments and recommendations have been noted in various sections of this report, particularly for parkland areas and dedication of land at the northwest corner of the site. Staff supports the planned project modifications and may recommend approval of the site plan once all details have been confirmed.

A draft development agreement has been prepared and is attached.

Prepared by Alexis DiLeo
Reviewed by Connie Pulcifer and Mark Lloyd
jsj/3/13/08



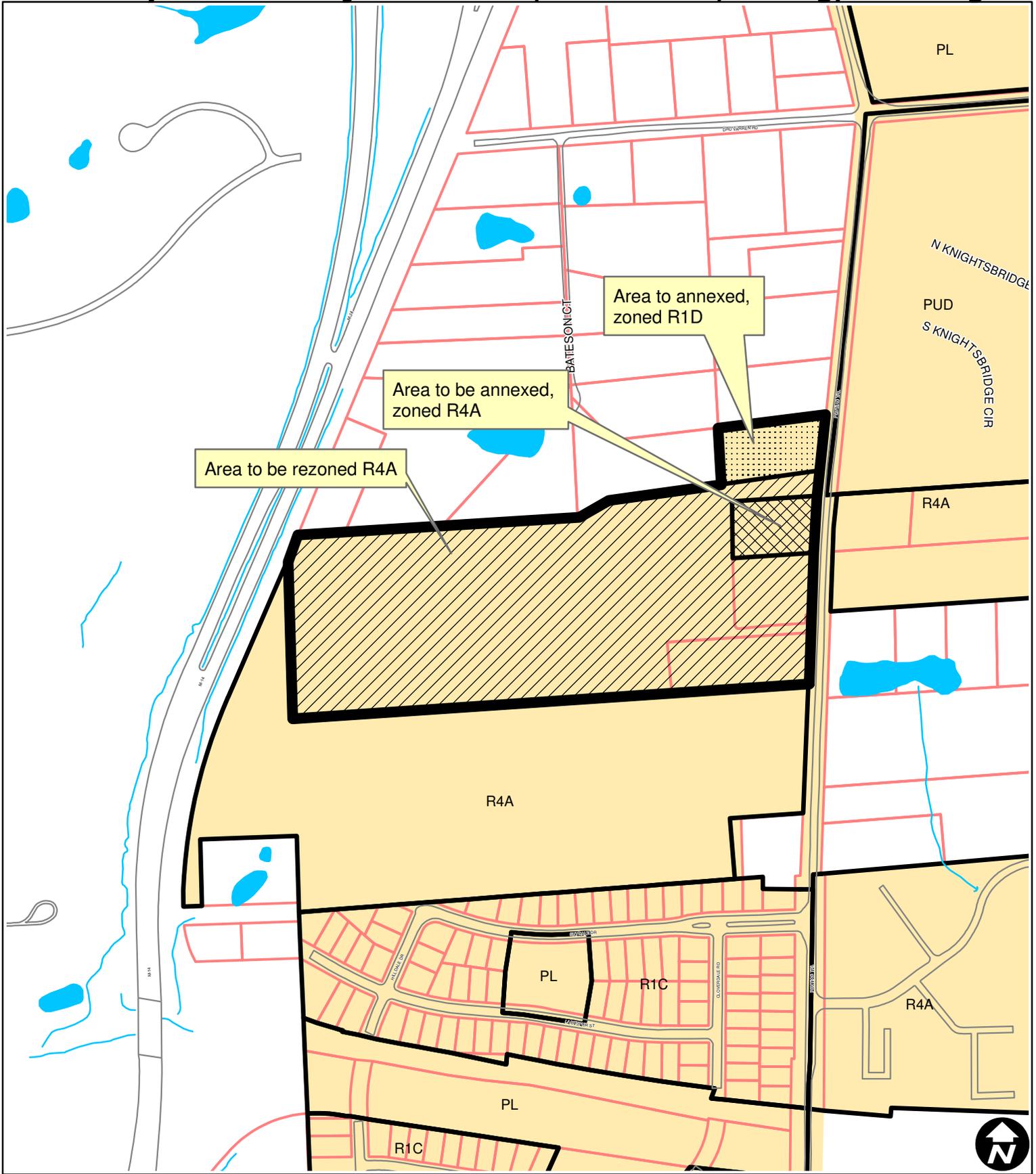
Attachments: Parcel/Zoning Map
Aerial Photo
Site Plan
Landscape Plan
Elevations
3/12/08 Draft Development Agreement

c: Petitioner's Representative: Scott Betzold
Midwestern Consulting, Inc.
2815 Plaza Drive
Ann Arbor, MI 48108

Owner: Northsky Neighborhood, LLC
2111 Golfside Road
Ypsilanti, MI 48197

City Attorney
Systems Planning
File Nos. 9162J9.1, .2 and .5b

Parcel and Zoning Map: North Sky Planned Project Site Plan, Annexation, Zoning/Rezoning



Map Legend
 City Boundary



Maps available online:
<http://gisweb.ewashtenaw.org/website/mapwashtenaw/>

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North Sky Aerial Photograph



Map Legend

- Railroads
- Parcels

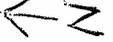
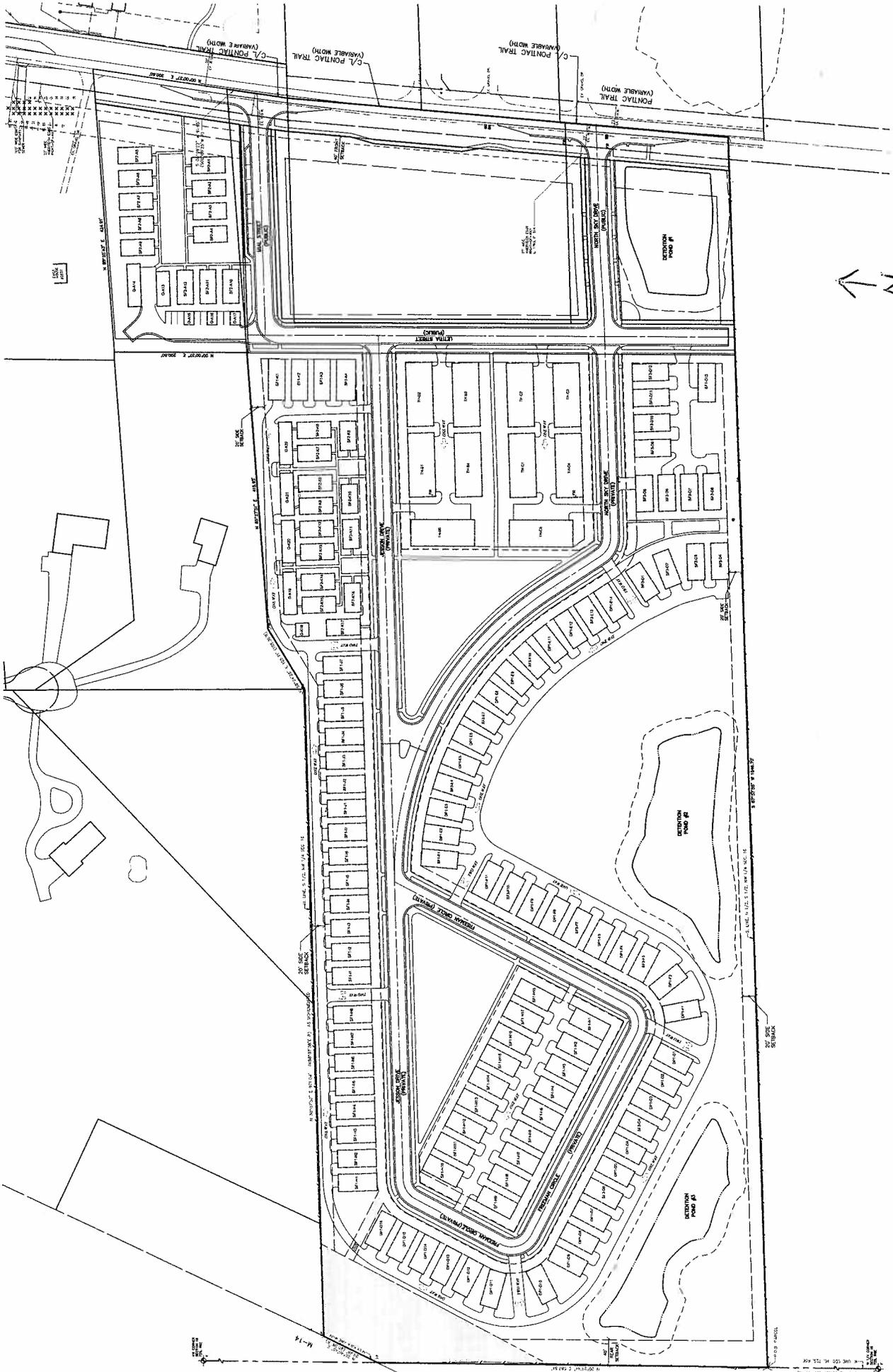


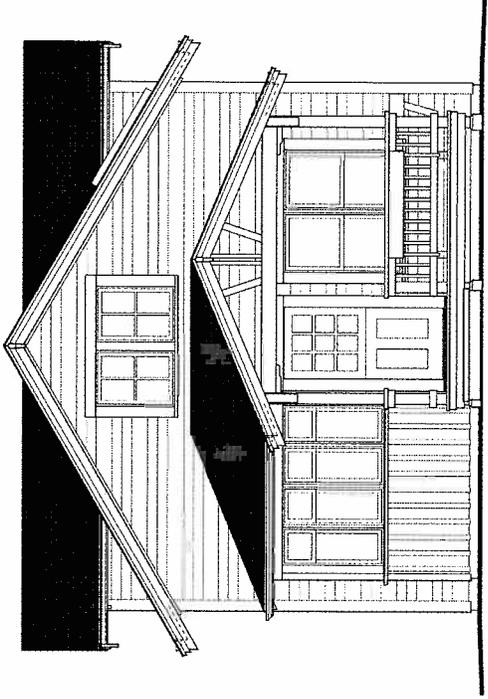
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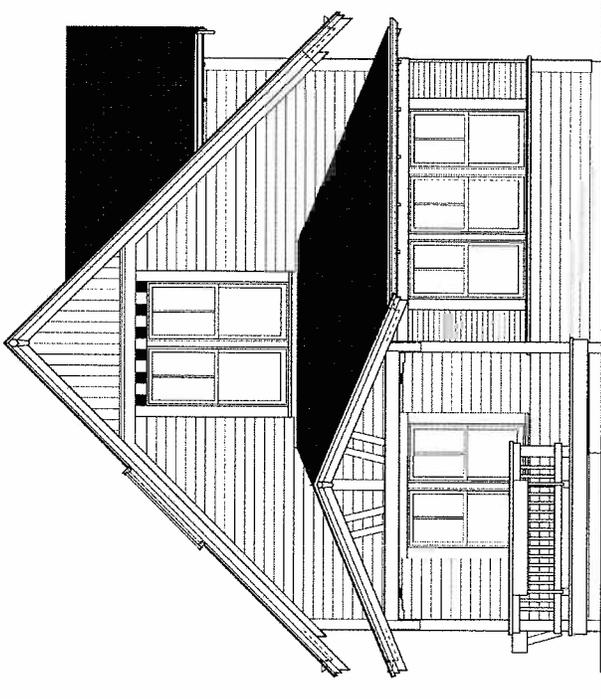
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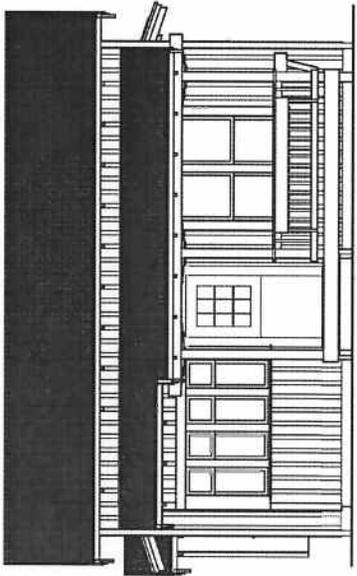




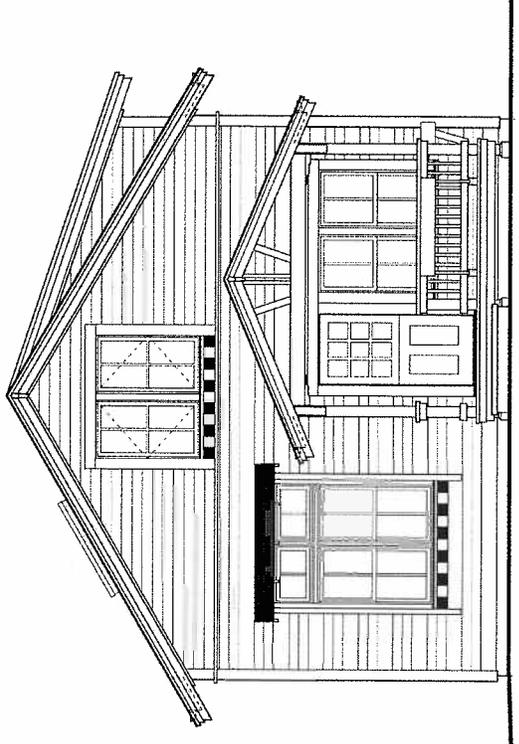
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COTTAGE UNIT 4
FRONT ELEVATION
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COTTAGE UNIT 1
FRONT ELEVATION
 SCALE: N.T.S.



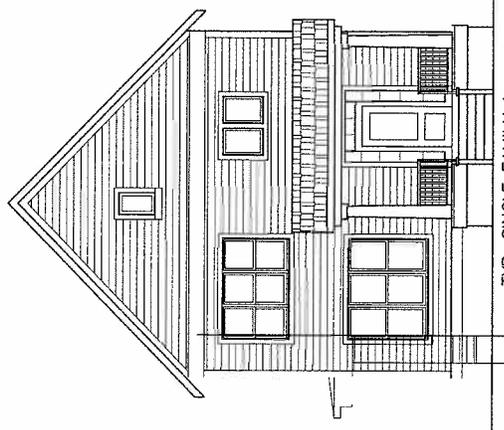
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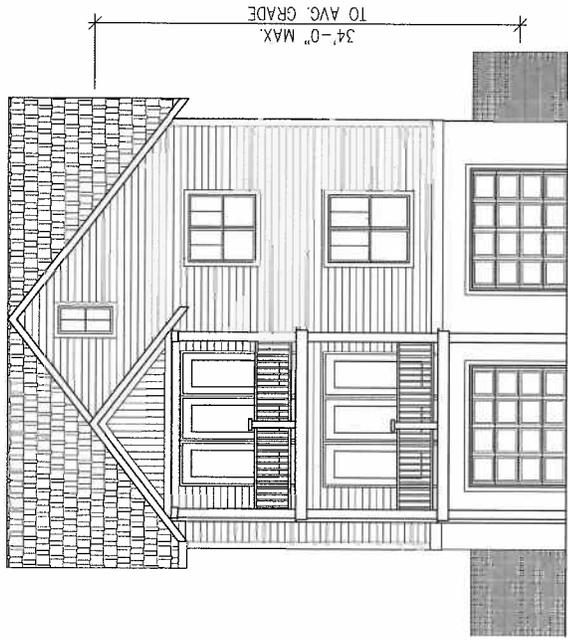
NORTH SKY
 BUILDING ELEVATIONS
 SPT. PLAN, PLANNED PROJECT, ANNEXATION AND REZONING

CLIENT
 2711 GOLDSIDE ROAD
 VESILANT, MICHIGAN
 NORTHWAY NEIGHBORHOOD, LLC.
 (734) 487-9840

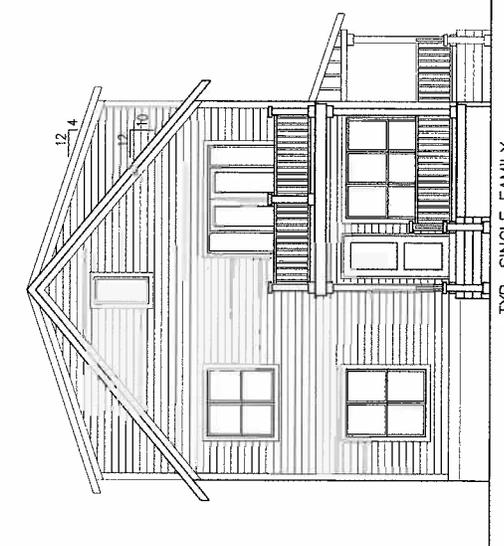
MIDWESTERN CONSULTING
 Civil, Environmental and
 Transportation Engineers
 3815 Phase Drive
 Farmington, Michigan
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 Fax: 734.955.0555



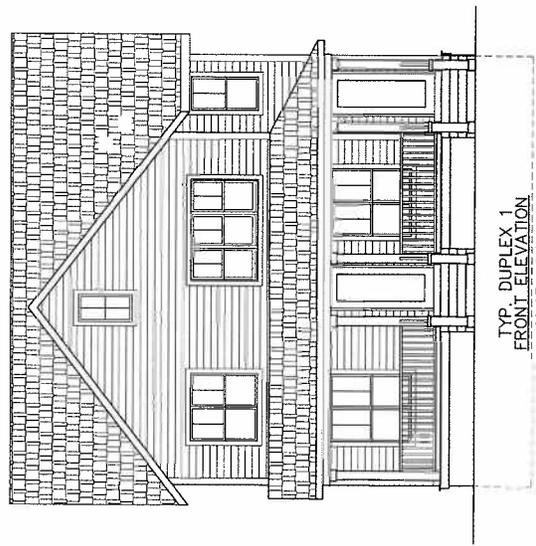
TYP. SINGLE FAMILY 1
 REAR ELEVATION
 SCALE - N.T.S.
 3 BR. UNITS



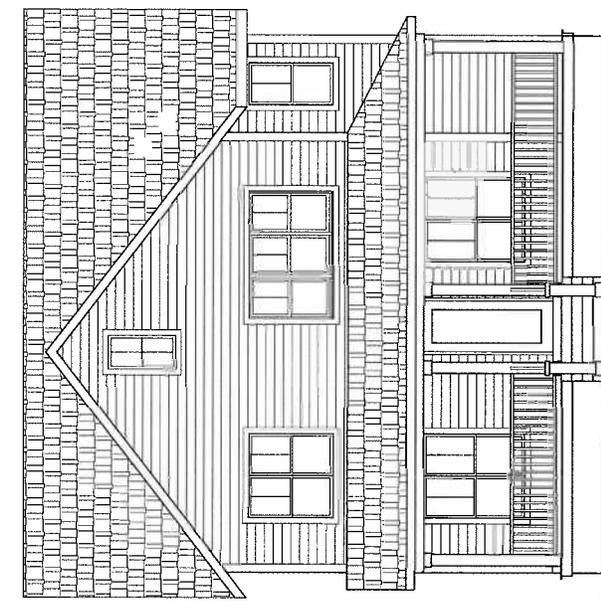
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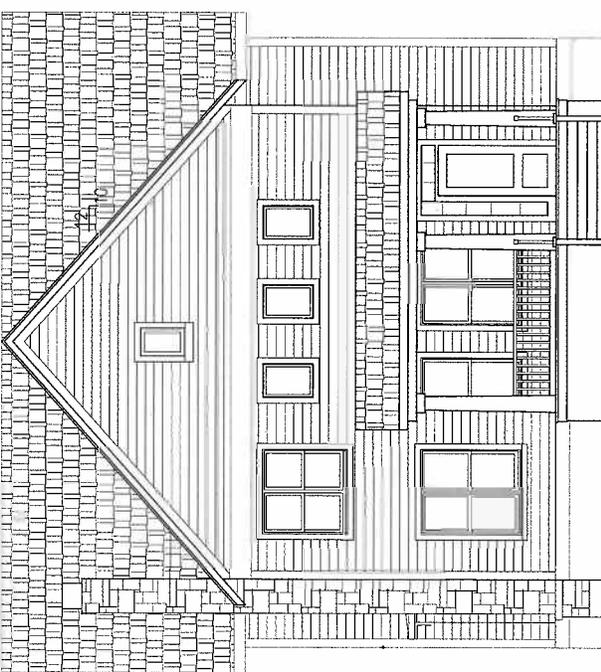
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 ALT. ELEVATION
 SCALE - N.T.S.
 3 BR. UNITS



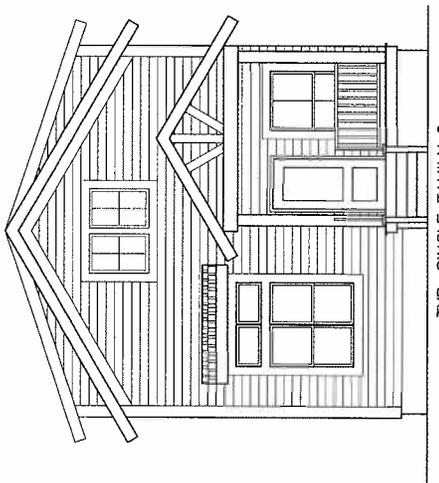
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 (2) 2 BR. UNITS



TYP. SINGLE FAMILY 3 ALT.
 FRONT ELEVATION
 SCALE - N.T.S.
 (2) 2 BR. UNITS



TYP. SINGLE FAMILY 3
 FRONT ELEVATION
 SCALE - N.T.S.
 3 BR. UNITS



TYP. SINGLE FAMILY 2
 ELEVATION
 SCALE - N.T.S.
 3 BR. UNITS

DRAFT
3/12/08

NORTH SKY CONDOMINIUMS DEVELOPMENT AGREEMENT
(Supercedes the Development Agreement of June 6, 2005)

THIS AGREEMENT, made this _____ day of _____, 2008, 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 BH A2 NORTH, LLC, a Michigan Limited Liability Company, with principal address at 543 North Main Street, Ann Arbor, Michigan 48104, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as NORTH SKY CONDOMINIUMS planned project site plan, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as NORTH SKY CONDOMINIUMS, and desires planned project 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 being issued.

THE PROPRIETOR HEREBY AGREES

(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, public streets, and public sidewalks ("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 departments 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 within each infrastructure phase (Phase 1 and Phase 2). To repair all defects in the improvements that occur within one year from the date of final 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, 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 and recording the master deed, 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, 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 within each infrastructure phase.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Pontiac Trail such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along the frontage when such improvements are determined by the CITY to be necessary. A provision shall be included in the master deed of the project stating that if the CITY undertakes to establish a special assessment district to improve Pontiac Trail, each unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

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

(P-9) To construct all public sidewalks and all private sidewalks that are adjacent to private streets in each building phase of the project prior to the issuance of the first certificate of occupancy for each building phase. To construct all private sidewalks to each unit prior to the issuance of a certificate of occupancy for that unit. Sidewalks along Pontiac Trail, the north side of Mial Street (connecting the stub to the property north of the site, around Detention pond #1 at the southeast corner of the site, and the west side of Letitia shall be constructed prior to the issuance of the first certificate of occupancy for the first building phase. Sidewalks along the south side of Mial Street, the east side of Letitia between Mial and North Sky Streets and the north side of North Sky Street shall be constructed prior to the issuance of the first building permit for the final building phase of construction or five (5) years after the approval of the site plan, whichever comes first.

(P-10) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Unit of Community Services in the form of a check payable to the City of Ann Arbor, including any amount that is identified in the plan as alternative mitigation for tree replacement. 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-11) To create an association composed of all owners of North Sky condominiums, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for North Sky condominiums. The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, sidewalks, private drives, driveways, on-site storm water management system, and all other common elements.

(P-12) To construct, repair and/or adequately maintain the on-site storm water management system, including bioswale plantings. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, including bioswale plantings, 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, including bioswale plantings, 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 Public Services Area.

(P-14) After construction of the private on-site storm water management system, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, or Association, at the address of record, requiring it to commence and complete the maintenance 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 or Association if the PROPRIETOR or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the PROPRIETOR in the master deed.

(P-15) Prior to building permits being issued, to restrict by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care fertilizer to that which contains a low- or no-phosphorous analysis, in order to minimize water quality impacts.

(P-16) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed prior to issuance of building permits.

(P-17) Prior to application for and issuance of certificates of occupancy, to complete the number of footing drain disconnects required under the CITY's Administrative Consent Order with the Michigan Department of Environmental Quality as indicated on the approved site plan. The PROPRIETOR may complete the footing drain disconnects on a prorated basis, calculated using the number and type of buildings for which certificates of occupancy are requested.

(P-18) Prior to the issuance of certificates of occupancy for any building phase, to contribute \$1,000 for each unit in the phase to the CITY's Housing Trust Fund. The PROPRIETOR may provide

affordable housing for low income households as a substitute for the contribution if acceptable to the Office of Community Development.

(P-19) To dedicate and record public access easements along all private drives and sidewalks that front the drives as shown on the approved site plan to allow public access to the neighborhood, prior to the issuance of the first certificate of occupancy in the final building phase or 5 years from the date the site plan is approved, which is first.

(P-20) To dedicate and record public access easements for the access and use of open spaces as shown on the approved site plan including two community open spaces in the center of the site, open space at the western edge of the site and an open space corridor west of the central detention pond, prior to the issuance of the first certificate of occupancy in the final building phase or 5 years from the date the site plan is approved, whichever is first. The PROPRIETOR agrees that the public access easements will have terms that prohibit the posting of any sign, fence, or impediment on or near the open space easements that serve to limit public access.

(P-21) That intersection improvements at Plymouth and Green Roads and/or improvements to Pontiac Trail will be beneficial to the PROPRIETOR's property and, therefore, the PROPRIETOR will pay \$18,000 of the cost of these improvements. The PROPRIETOR will pay to the CITY, within 90 days of written notice by the CITY sent to the PROPRIETOR's address listed above, \$18,000 toward the cost of future improvements to the Plymouth and Green Roads intersection and/or Pontiac Trail. If the PROPRIETOR fails to make timely or full payment to the CITY in the agreed upon manner, any unpaid amounts shall become a lien against the land described below and may be placed on the City tax roll as a single lot assessment as provided under Ann Arbor City Code.

(P-22) A street signage plan shall be submitted to the Public Services Area prior to the issuance of the first building permit for the public and private drive systems. The Public Services Area shall have final approval and make final and future determinations for signage on the public streets, including parking. The CITY shall install all signs in the public rights-of-way after the appropriate Traffic Control Orders are approved. The PROPRIETOR shall pay for the cost of the signs and installation of the signs installed in the public rights-of-way as well as any signs installed on the private drives.

(P-23) The PROPRIETOR agrees to provide a bond or letter of credit for 150% of the cost of materials and installation for all required mitigation trees prior to issuance of any permits. It shall be the responsibility of the PROPRIETOR to renew any letters of credit prior to their expiration. The PROPRIETOR further agrees to install and maintain all required mitigation trees within five years from the date of this agreement regardless of the number of units that have been constructed.

(P-24) Prior to application for and issuance of any permits, to enter into an agreement with the CITY identifying specific public improvements to be made to provide sanitary sewer capacity for the project, the timing for construction of the improvements. No building permits shall be issued until such improvements have been completed to the satisfaction of the Public Services Area.

(P-25) PROPRIETOR is the sole titleholder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the persons signing below on behalf of PROPRIETOR have legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-26) 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-27) 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 amounts 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, 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-28) 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 NORTH SKY CONDOMINIUMS Planned Project 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:

Parcel A

Commencing at the W ¼ corner, Section 16, T2S, R6E, Ann Arbor Township, Washtenaw County, Michigan, thence N 00°24'44" E 667.61 (667.66 feet recorded) along the West line of said Section 16 to the POINT OF BEGINNING, thence continuing N 00°24'44" E 587.84 feet along the West line of said Section 16; thence N 25°46'45" E 89.98 feet (90.08 feet recorded) along the Southeasterly right-of-way line of M-14; thence N 88°07'57" E 971.09 feet (N 88°07'08" E recorded) along the North line of the S ½ of the NW ¼ of said Section 16 as monumented; thence N 58°24'26" E 105.71 feet (N 58°31'27" E 105.36 feet recorded); thence N 85°27'51" E 812.67 feet; thence S 08°09'22"

W 91.65 feet (S 08°09'25" W recorded) along the centerline of Pontiac Trail (variable width); thence S 88°07'57" W 336.68 feet (N 88°07'08" E recorded) along the North line of the S ½ of the NW ¼ of said Section 16 as monumented; thence S 00°00'00" E 201.16 feet (201.10 feet recorded); thence S 88°07'08" W 258.33 feet; thence S 00°00'00" E 216.49 feet; thence N 88°07'08" E 559.94 feet (559.86 feet recorded); thence S 04°47'06" W 65.22 feet (S 04°46'55" W recorded) along the centerline of said Pontiac Trail; thence S 88°00'55" W 533.46 feet (533.38 feet recorded); thence S 00°00'00" E 180.06 feet (181.20 feet recorded); thence S 87°57'55" W 1328.31 feet (S 88°01'00" W 1328.23 feet recorded) along the South line of the N ½ of the S ½ of the NW ¼ of said Section 16 to the POINT OF BEGINNING. Being a part of the NW ¼ of said Section 16 and containing 23.37 acres of land, more or less. Being subject to the rights of the public over the Easterly 33.00 feet thereof, as occupied by said Pontiac Trail. Being subject to easements and restrictions of record, if any.

Parcel B

Commencing at the W ¼ corner, Section 16, T2S, R6E, Ann Arbor Township, Washtenaw County, Michigan, thence N 00°24'44" E 667.61 feet (667.66 feet recorded) along the West line of said Section 16; thence N 87°57'55" E 1328.31 feet (N 88°01'00" E 1328.23 feet recorded) along the South line of the N ½ of the S ½ of the NW ¼ of said Section 16 to the POINT OF BEGINNING; thence N 00°00'00" W 180.06 feet (181.20 feet recorded); thence N 88°00'55" E 533.46 feet (533.38 feet recorded); thence S 04°47'06" W 180.76 feet along the centerline of Pontiac Trail (variable width); thence S 87°57'55" W 518.39 feet (S 88°01'00" W recorded) along the South line of the N ½ of the S ½ of the NW ¼ of said Section 16 to the POINT OF BEGINNING. Being a part of the NW ¼ of said Section 16 and containing 2.17 acres of land, more or less. Being subject to the rights of the public over the Easterly 33.00 feet thereof, as occupied by said Pontiac Trail. 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.

(T-7) This Agreement supercedes the Development Agreement of June 6, 2005, between the City of Ann Arbor and BH A2 NORTH, LLC, recorded on November 30, 2005 in Liber 4524, Page 243, Washtenaw County Records.

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

BH A2 NORTH, LLC
A Michigan Limited Liability Company
543 North Main Street
Ann Arbor, Michigan 48104

By: _____
Geoffrey L. Baker, Managing Member

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2008, 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

