

BANYAN COURT DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2016, 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 1654 South Maple Road LLC, a Michigan limited liability company, with principal address at 202 East Madison Street, Ann Arbor, Michigan, 48104, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as Banyan Court, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Banyan Court, and desires site plan and development agreement approval thereof, and

WHEREAS, the DEVELOPER 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 DEVELOPER will install these Improvements prior to any permits being issued.

THE DEVELOPER(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, private streets, ("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 DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including all 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 and private 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 DEVELOPER'S engineer inspects.

(P-4) To grant easements to the CITY for water mains, storm water mains, sanitary sewer mains, pedestrian access, access for City services, and additional right-of-way along South Maple Road, as shown on the approved site plan and the final approved construction plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits and the easements shall be granted to the CITY in a form acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) To provide, 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 DEVELOPER, the CITY will provide and install all street name signs and invoice the DEVELOPER for actual cost of installation.

(P-6) To install all water mains, storm sewers, and sanitary sewers and private 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, or at a later time as determined by the CITY Public Services Area.

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South Maple Road, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South Maple Road frontage when such Improvements are determined by the CITY to be necessary. (A provision shall be included in the master deed for the project stating that if the CITY undertakes to establish a special assessment district to improve South Maple Road each unit shall be assessed its pro rata share of the cost of Improvements allocable to the property.)

(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 DEVELOPER, 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 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 landmark trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER or each condominium unit owner in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of Certificate of Occupancy or final approval of the unit. Existing landmark 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 or final approval of the unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-11) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$ 6,200.00 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to a park within a ½ mile of the site, such as South Maple Park, Mushroom Park, Dicken Woods and Hansen Park.

(P-12) 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. The City Administrator may authorize the DEVELOPER 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 DEVELOPER one year after the date of acceptance by the CITY.

(P-13) To create an association composed of all owners of Banyan Court condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for Banyan Court. The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, on-site storm water management system, private street, sidewalks and paths, and all other common elements.

(P-14) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.

(P-15) 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 DEVELOPER or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, or Association, at the address listed above, 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 DEVELOPER or Association if the DEVELOPER 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 DEVELOPER in the master deed.

(P-16) 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 upon request.

(P-17) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-18) 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, DEVELOPER 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-19) 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-20) No lot in Banyan Court may be divided such that an additional building parcel is created.

(P-21) Prior to application for and issuance of certificates of occupancy, to disconnect two 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 City of Ann Arbor Developer Offset Mitigation Program, as revised by City Council on June 15, 2015 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council-approved amendments to or replacement of the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER 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-22) DEVELOPER 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 DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-23) 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 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 DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER 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 Agreement.

(P-24) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER 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-25) 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 Banyan Court Site Plan.

(C-2) To use the park contribution described above for Improvements to South Maple Park, Mushroom Park, Dicken Woods, and/or Hansen Park.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the DEVELOPER 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 DEVELOPER, 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:

Scio Township, Washtenaw County, State of Michigan

Commencing at the East 1/4 Corner, Section 36, Township 2 South, Range 5 East, Scio Township, Washtenaw County, State of Michigan; thence S00°01'30"W 1026.50 feet along the east line of said Section and the centerline of South Maple Road; thence S89°32'30"W 33.00 feet for a Place of Beginning; thence continuing S89°32'30"W 687.33 feet (previously recorded as 685.17 feet) along the north line of Country Village Condominiums as recorded in Washtenaw County Condominium Subdivision Plan 145; thence along the easterly right-of-way line of Interstate 94 highway nontangentially 189.28 feet along the arc of a 3674.72 feet radius circular curve concave to the northeast, having a central angle of 02°57'05", and a chord which bears N29°33'34"W 189.26 feet; thence N89°41'30"E 780.76 feet (previously recorded as 780.14 feet) along the south line of Morningside Condominiums as recorded in Washtenaw County Condominium Subdivision Plan 163; thence S00°01'30"W 163.33 feet along the west right-of-way line of said South Maple Road to the Place of Beginning. Being a part of the S.E. 1/4 of said Section 36 and containing 2.77 acres of land, more or less.

Parcel Number:

(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 DEVELOPER, 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 DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER 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.

CITY OF ANN ARBOR, MICHIGAN

301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Tom Crawford, Interim City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

1654 South Maple Road, LLC, a Michigan
limited liability company

By: _____
Alex De Parry, its managing member

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____

Acting in the County of Washtenaw

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by Alex De Parry, managing member of 1654 South Maple Road, LLC, a Michigan limited liability company, on behalf of the company.

NOTARY PUBLIC
County of _____, State of _____
My Commission Expires: _____
Acting in the County of _____

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