

KINGSLEY CONDOMINIUMS DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 20__, 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 Kingsley Condominiums, LLC__, a Michigan limited liability company, with principal address at _____, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below ("Property") and site planned as Kingsley Condominiums, and

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

WHEREAS, on _____, 2016, City Council approved Kingsley Condominiums Planned Project Site Plan ("Site Plan") and Kingsley Condominiums Development Agreement ("Agreement") pursuant to a resolution adopted on that date, 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 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, public and private storm water management systems, and 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 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 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 DEVELOPER'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 and public streets. 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 public water mains and public storm sewers, and public sanitary sewers pursuant to CITY approved plans and specifications, necessary to connect the Property with existing CITY systems adjacent to the Property prior to the issuance of any building permits, except the timing of such work may be revised to be completed at a later time at the discretion of the CITY Public Services Area..

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to West Kingsley Street and Felch Street such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along West Kingsley Street and Felch Street frontages 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 West Kingsley Street and Felch Street, each unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

(P-7) To grant a public, non-motorized access easement to the CITY for access along the west side of the site for immediate use by the public and possible future use as a greenway as shown on the Site Plan, and an easement for pedestrian access along the east side as shown on the Site 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 reasonably 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-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 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 landmark and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER 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 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 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 \$ 31,620.00 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to a park within walking distance of the development such as the Farmers Market, North Main Park, Sculpture Plaza, West Park and Wheeler 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 and is to include all on-site public streets. 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 construct, repair and/or adequately maintain the private on-site storm water management system. After construction of the private on-site storm water management system, to maintain it in perpetuity. 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 fails to maintain any portion of the 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 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, if the DEVELOPER fails to complete the maintenance work within the time set forth in the notice. If, after such notice the CITY completes the work, and the costs remain unpaid by the DEVELOPER 60 days after notice via first class mail, the CITY may bill the DEVELOPER for the total cost, or assess the property as provided in Chapter 13 of Ann Arbor City Code.

(P-14) 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, if any, and to provide a written copy of this evaluation to the CITY Public Services Area upon request.

(P-15) 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-16) 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-17) Prior to application for and issuance of certificates of occupancy, to disconnect 13 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"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with 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-18) To create an association composed of all owners of Kingsley Condominiums condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for Kingsley Condominiums. The association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, driveways, on-site storm water management system including bioswales, pedestrian sidewalks and paths, and all other common elements.

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

(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 DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved development 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 development agreement.

(P-21) 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-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 Kingsley Condominiums Planned Project Site Plan.

(C-2) To use the park contribution described above for improvements to the Farmers Market or other park within walking distance of the site.

(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:

Parcel I: That part of land being Lots 2 through 7, Block 4 North, Range 2 East, James B. Gott's First Addition to the City of Ann Arbor, as recorded in Liber 50 of Deeds, pages 61 and 62, more particularly described as follows:

Beginning at the point of intersection in the Southerly line of Felch Street with the Easterly line of vacated First Street; thence Easterly along the Southerly line of Felch Street to a point in the centerline of Allen Creek as existed in 1861; thence Southerly along the meandering of said creek, as existed in 1861, to a point in a line parallel to the Northerly line of Kingsley Street, which parallel line intersects the Easterly line of vacated First Street at a point 66 feet Northerly of the Northerly line of said Kingsley Street, measured along the Easterly line of vacated First Street; thence Westerly along said parallel line to the Easterly line of vacated First Street; thence Northerly along the Easterly line of vacated First Street to the point of beginning.

Parcel II: Commencing at the North $\frac{1}{4}$ corner, Section 29, Township 2 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan; thence N87°53'30"E 29.32 feet along the centerline of Felch Street, as shown on Assessor's Plat No. 22, as recorded in Liber 9 of Plats, page 6, Washtenaw County Records; thence S02°06'30" E 33 feet for a Place of Beginning; thence S04°27'50"W 436.08 feet along the east line of First Street (now vacated), as shown on the Plat of James B. Gott's Addition to the City of Ann Arbor, as recorded in Liber 50 of Deeds, pages 61 and 62, Washtenaw County Records, thence N85°51'10"W 57.75 feet along the north line of North Street (now west Kingsley Street), as shown on said Gott's Addition; thence N08°12'40"E 343.86 feet; thence N10°27'30"E 90.79 feet; thence N87°53'30"E 25.97 feet along the south line of Felch Street to the Place of Beginning; being part of vacated First Street, as shown on the Plat of James B. Gott's Addition to the City of Ann Arbor.

Parcel III: Land in the City of Ann Arbor, Washtenaw County, Michigan, as described as:

Lot 1, Block 4 North, Range 2 East, James B. Gott's Addition, as recorded in Liber 50 of Deeds, pages 61 and 62, Washtenaw County Records. Also the part of Lot 1, Block 4 North, Range 2 East, of the Original Plat of Ann Arbor, as recorded in Transcripts, pages 152 and 153, Washtenaw County Records, not replatted into James B. Gott's Addition, except the East 3.5 feet thereof.

(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.

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

Witnesses:

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:

Howard S. Lazarus, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

Witness:

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20___, before me personally appeared Christopher Taylor, 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 _____, 20___, before me personally appeared _____, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

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

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