

THE VILLAGE OF ANN ARBOR DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2023, 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 The Village of Ann Arbor Apartments, LLC, a Michigan Limited Liability Company, with principal address at Robertson Brothers Co., 6905 Telegraph Road, Suite 200, Bloomfield Hills, Michigan, 48301, hereinafter called APARTMENTS, LLC; The Village of Ann Arbor Condominiums, LLC, a Michigan Limited Liability Company, with principal address at Robertson Brothers Co., 6905 Telegraph Road, Suite 200, Bloomfield Hills, Michigan, 48301, hereinafter called CONDOMINIUM LLC, and hereinafter APARTMENTS LLC AND CONDOMINIUM LLC are collectively referred to as DEVELOPER, witnesses that:

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

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Village of Ann Arbor, and desires Site Plan for City Council 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 ensure 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 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 main, public sanitary sewer mains, private storm water management system, public sidewalk, and private sidewalk ("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 for each phase by the CITY, commencing on the latest date of the acceptance of any Improvements for that phase 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 for that phase within the time set forth in the notice. The CITY may cause the work to be completed for that phase 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 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 DEVELOPER'S engineer inspects.

(P-4) To grant a public access easement to the CITY for access to Leslie Park from Pontiac Trail and Dhu Varren Road and utility easements as shown on the site plan and approved civil construction drawings, 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 easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the 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.

(P-6) To install, in CITY approved phases, all water mains, fire hydrants, storm sewers, sanitary sewers and public streets, through the first course of asphalt, pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits. Building permits may be issued for the construction of one model home for each model type, including the apartment units, and the clubhouse/leasing office prior to the first course of asphalt, provided that the road meets Fire Department requirements. The final course of asphalt shall be completed prior to the issuance of the final certificate of occupancy for the entire the site.

(P-7) To install the Methane Interceptor Trench prior to the issuance of the first building permit.

(P-8) To be included in a future special assessment district, along with other benefiting properties, for the construction of additional Improvements to Pontiac Trail and Dhu Varren, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Pontiac Trail and Dhu Varren frontage when such Improvements are determined by the CITY to be necessary. And, to include a provision in the master deed stating that if the CITY undertakes to establish a special assessment district to improve Pontiac Trail and Dhu Varren, each unit shall be assessed a its pro rata share of the cost of Improvements allocable to the Property.

(P-9) 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-10) 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-11) Existing woodland, landmark, and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER and each condominium unit owner in good condition for a minimum of three years after acceptance of the public Improvements by the CITY for a particular phase or granting of Certificate of Occupancy. Existing woodland, landmark and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public Improvements or granting of Certificate of Occupancy, shall be replaced by the DEVELOPER as provided by the Ann Arbor City Unified Development Code. Existing trees located on the former CITY landfill shall remain in their natural state with the exception of a walking path to be installed by the DEVELOPER and shall not be part of replacement requirements.

(P-12) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$302,500 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to Leslie Park or Olson Park.

(P-13) To create a master association composed of all owners of The Village of Ann Arbor condominium, in which membership shall be required by covenants and restrictions recorded as part of the master deeds for each condominium in The Village of Ann Arbor. A master association with two or more sub-associations will be formed for the over-all development, hereafter called MASTER ASSOCIATION. The MASTER ASSOCIATION shall be responsible for the master deed of the association and provide for perpetual maintenance and ownership of the landscape materials, exterior lighting, driveways, private on-site storm water management system, and all other common elements.

(P-14) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER or MASTER ASSOCIATION fails to repair and or maintain the private stormwater system as required by P-15 below, the CITY may send notice via first class mail either to the DEVELOPER to the address listed above or to the MASTER ASSOCIATION, whichever is appropriate, 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, or the MASTER ASSOCIATION, as required by P-15, below. If the DEVELOPER, or MASTER ASSOCIATION, whichever is appropriate 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 MASTER ASSOCIATION's board of directors. Thereafter, by provision in the master deed, the MASTER 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 MASTER ASSOCIATION, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, or MASTER 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 MASTER ASSOCIATION if the DEVELOPER or MASTER 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 complete the Wetland Restoration Plan for the wetland on the west side of the site as described and shown on the approved site plan for a total of three years or until the stated restoration efforts have been completed. The first year of restoration must be completed prior to the issuance of any certificate of occupancy. The second year of restoration must be completed prior to the request for or issuance of a certificate of occupancy in the second phase. The third year of restoration must be provided prior to the issuance of the final certificate of occupancy.

(P-18) 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-19) The CITY has the right, at its sole discretion, to choose which traffic mitigation measures it will implement. The DEVELOPER agrees to contribute funding, not to exceed \$1,200,000, to the CITY for construction and non-construction costs associated with a new roundabout that is anticipated to be constructed at the intersection of Pontiac Trail and Dhu Varren Road which will benefit residents of The Village of Ann Arbor. The DEVELOPER will pay to the CITY within 60 days of invoicing for these costs. The DEVELOPER will be reimbursed for these costs from non-environmental Brownfield funds as reflected in the approved Brownfield Plan for the Village of Ann Arbor. Separately, DEVELOPER agrees to install a pedestrian crossing of Dhu Varren Road with property lighting as well as RRFB's to the existing crosswalk in Pontiac Trail and future crosswalk in Dhu Varren Road which are not reimbursable by the Brownfield Plan for the Village of Ann Arbor.

(P-20) 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-21) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for

consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-22) 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-23) No lot in The Village of Ann Arbor may be divided such that an additional building parcel is created.

(P-24) The petitioner requested cart service for the townhome portion of the site and has shown on the site plan the cart staging locations for servicing by solid waste and recycling vehicles. Cart transport requirements shall be included by the DEVELOPER in the master deed. If the City finds that the residents of The Village of Ann Arbor are unwilling to transport carts to these designated locations, or placement of the carts do not adhere to the designated locations, including cart spacing, the City will require that the carts be replaced by dumpsters for solid waste and recycling services. All costs associated with these modifications, including the construction of dumpster corrals that meet the City's then-current standards will be at the expense of the property owner. An alternative solid waste plan has been provided on the approved site plan which includes a servicing narrative for both refuse and recycling collection utilizing City approved dumpsters. This alternative solid waste plan has been reviewed and approved as part of this current site plan review and could be implemented without future site plan amendments.

(P-25) Prior to the issuance of certificates of occupancy for any of the townhome units on the north side of the site that are planned to be owner-occupied, to install electrical appliances only and all-electric heating and cooling systems for each townhome unit. Also, prior to the issuance of certificates of occupancy for each proposed rental unit, to install electrical infrastructure with sufficient capacity in each unit to enable future conversion to all electrical appliances and all electric heating and cooling systems.

(P-26) Prior to the issuance of any certificate of occupancy for any unit on the site, to complete all construction related items of the approved Brownfield Plan for that particular phase, in accordance with the approved phasing plan.

(P-27) DEVELOPER is or will be 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-28) 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 or MASTER ASSOCIATION complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER or MASTER ASSOCIATION 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-29) 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-30) 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 Village of Ann Arbor Site Plan.

(C-2) To use the park contribution described above for improvements to Leslie and Olson Parks.

(C-3) To use the \$1,200,000 contribution for traffic mitigation measures for the Pontiac Trail Corridor as reimbursed under the Brownfield Plan.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) To record this Agreement with the Washtenaw County Register of Deeds.

(C-6) To approve one sales trailer for use in selling condominium units and one leasing trailer for the apartment units and to approve up the three onsite construction trailers pursuant to CITY ordinances and conditioned on approval by the CITY Fire Marshall, CITY Building Official, Public Services Administrator, and Community Services Administrator.

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) Except as provided to P-13 above, 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:

City of Ann Arbor, Washtenaw County, Michigan

**Village of Ann Arbor
Combined Parcel Description
18002264**

**DESCRIPTION OF A 67.599 ACRE PARCEL OF LAND BEING A PART OF THE
NORTHEAST 1/4 OF SECTION 16, T2S, R6E, ANN ARBOR TOWNSHIP,
WASHTENAW COUNTY, MICHIGAN (AS SURVEYED BY ATWELL):**

COMMENCING AT THE NORTH 1/4 CORNER OF SECTION 16, TOWN 2 SOUTH, RANGE 6 EAST, ANN ARBOR TOWNSHIP, WASHTENAW COUNTY, MICHIGAN; THENCE N85°25'55"E (RECORDED AS EASTERLY) 548.14 FEET ALONG THE NORTH LINE OF SAID SECTION 16, LYING IN DHU VARREN ROAD (66 FEET WIDE), FOR A **PLACE OF BEGINNING**; THENCE CONTINUING N85°25'55"E (RECORDED AS EASTERLY) 330.00 FEET ALONG THE NORTH LINE OF SAID SECTION 16; THENCE S01°26'05"E 824.88 FEET (RECORDED AS SOUTHERLY 825.05 FEET); THENCE N85°25'24"E 451.51 FEET ALONG THE SOUTH LINE OF THE NORTH 825.50 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 16 (AS MONUMENTED); THENCE S01°35'49"E 1829.70 FEET ALONG THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 16 (AS MONUMENTED); THENCE S85°39'13"W 1332.59 FEET ALONG THE EAST-WEST 1/4 LINE OF SAID SECTION 16 TO THE CENTER POST OF SAID SECTION 16; THENCE N01°28'38"W (RECORDED AS S00°42'45"W) 608.56 FEET ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 16; THENCE S85°45'46"W (RECORDED AS S87°57'09"W) 810.65 FEET; THENCE N02°35'32"E (RECORDED AS N04°46'55"E) 307.87 FEET ALONG THE CENTERLINE OF PONTIAC TRAIL (66 FEET WIDE); THENCE N85°46'51"E (RECORDED AS N87°56'54"E) 788.95 FEET; THENCE N01°28'39"W (RECORDED AS S00°42'45"W) 910.17 FEET ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 16; THENCE N85°25'24"E (RECORDED AS WESTERLY) 547.54 FEET ALONG THE SOUTH LINE OF THE NORTH 825.50 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 16 (AS MONUMENTED); THENCE N01°26'05"W 824.93 FEET (RECORDED AS NORTHERLY 825.05 FEET) TO THE PLACE OF BEGINNING, BEING A PART OF THE NORTHEAST 1/4 OF SAID SECTION 16, CONTAINING 67.599 ACRES OF LAND, MORE OR LESS, BEING SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE NORTHERLY 33 FEET THEREOF, AS OCCUPIED BY SAID DHU VARREN ROAD, ALSO BEING SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE WESTERLY 33 FEET THEREOF, AS OCCUPIED BY SAID PONTIAC TRAIL, AND ALSO BEING SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS AND EXCEPTIONS 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 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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

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:

Milton Dohoney Jr, City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

THE VILLAGE OF ANN ARBOR
The Village of Ann Arbor, LLC, a Michigan Limited Liability Company

By: _____
James V. Clarke, President, Robertson Brothers Co.

DTN ASSET MANAGEMENT & DEVELOPMENT
DTN Asset Management & Development, LLC, a Michigan Limited Liability Company

By: _____
Colin Cronin, Manager, DTN Asset Management & Development, LLC

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ 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 _____, 20__ by _____, _____ of _____, a _____, on behalf of the _____.

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
ATTN: Brett Lenart
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265