

**THE COTTAGES AT BARTON GREEN DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, 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 Trinitas Development, LLC, an Indiana limited liability company, with principal address at 201 Main Street, Suite 201, Lafayette, Indiana, 47901, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as The Cottages at Barton Green, 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 Cottages at Barton Green, and desires site plan and development agreement approval thereof, and

WHEREAS, on \_\_\_\_\_, City Council approved The Cottages at Barton Green Site Plan ("Site Plan") and The Cottages at Barton Green 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 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 and sanitary sewer mains, private storm water management systems, public sidewalks (including the sidewalk along Pontiac Trail to the existing sidewalk at Skydale Drive), public streets, and streetlights ("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.

(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 an easement to the CITY for public water mains and sanitary sewer mains as shown on the Site Plan and subsequent 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 grant an easement to the CITY for public streets and sidewalks as shown on the Site Plan and subsequent 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 easement may be accepted at a later time as determined by the CITY Public Services Area.

(P-6) To grant a public access easement to the CITY of 50 feet in width from Skydale Drive to the proposed park dedication on the east side of the site as shown on the Site Plan and subsequent construction drawings, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form 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, although the easement may be accepted at a later time as determined by the CITY Public Services Area.

(P-7) 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-8) To install all water mains, storm sewers, sanitary sewers, 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 for each phase of the development as shown on the approved site plan or at a later time as determined by the CITY Public Services Area. The final course of asphalt paving shall be completed prior to the issuance of the final certificate of occupancy for the first completed residential building.

(P-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to Pontiac Trail and St Regis Way, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and e planting of trees along Pontiac Trail and St. Regis Way frontage when such Improvements are determined by the CITY to be necessary.

(P-10) 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-11) 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-12) Existing woodland, 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 for the final unit. Existing woodland, landmark, or 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 for the final unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code, as amended.

(P-13) Prior to the issuance of any certificate of occupancy, to convey to the CITY approximately 9.86 acres of land for a public park as shown on the Site Plan and subsequent construction drawings. The conveyance shall be made by a warranty deed in a form acceptable to the CITY attorney, and shall be subject to the final approval of City Council. The DEVELOPER shall record the deed and its conveyance to the CITY as public parkland. A park identification sign shall be provided by the DEVELOPER per CITY specifications before issuance of any certificate of occupancy.

(P-14) 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-15) 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-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 ensure that no construction traffic or staging of construction equipment or material takes place on neighborhood streets in neighborhoods adjacent to the site.

(P-18) That traffic mitigation measures for Pontiac Trail will be beneficial to the DEVELOPER'S property and, therefore, to install a center-left turn lane within Pontiac Trail to facilitate access to The Cottages at Barton Green prior to the request for and issuance of any certificate of occupancy and to install a pedestrian crosswalk and associated treatment across Pontiac Trail as indicated on the Site Plan and subsequent construction drawings prior to the request for and issuance of any certificate of occupancy. Additionally, to pay to the CITY \$346,000 to contribute to the cost of an intersection improvement at Pontiac Trail and Barton Drive prior to the request for or issuance of a grading permit.

(P-19) 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-20) To include the elevation drawings, as submitted to City Council, as part of the 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 for the site plan approved by City Council.

(P-21) 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-22) DEVELOPER agrees to maintain pathways on private property that connect the residential area to the proposed City park on the west side of the site as shown on the approved site plan. Maintenance includes removing weeds, periodically installing wood chips, and removing barriers to the path.

(P-23) To maintain the gated entrance at the southwest corner of the site to Skydale Drive so that it is permanently gated and that nothing blocks emergency access to the site.

(P-24) To provide construction access to the site from Pontiac Trail only and to stage construction equipment and material on the site. No construction access or staging of construction equipment or material shall be allowed from or on adjoining streets. Utility

connections can be made within the Skydale Drive right-of-way as shown on the approved site plan.

(P-25) To complete the Woodlands Restoration Plan for the 1.95 acre woodland 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 building permit. The second year of restoration must be completed prior to the request for or issuance of any certificate of occupancy. Documentation of payment for the third year of restoration shall be provided to the CITY prior to the issuance of the final certificate of occupancy.

(P-26) 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 legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-27) Failure to construct, repair and/or maintain the site pursuant to the Site Plan and/or failure to comply with any of this 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 Site Plan and/or Agreement.

(P-28) 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-29) 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 Cottages at Barton Green Site Plan.

(C-2) To use the \$346,000 contribution for traffic mitigation measures at the Pontiac Trail/Barton Drive Intersection as stated above.

(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:

City of Ann Arbor, Washtenaw County, Michigan

Beginning at the West 1/4 corner of Section 16, Town 2 South, Range 6 East; thence North 00 degrees 24 minutes 44 seconds East 267.00 feet along the West line of said Section 16; thence North 89 degrees 42 minutes 29 seconds West 340.00 feet parallel with the East and West 1/4 line of Section 17; thence South 00 degrees 24 minutes 44 seconds West 267.00 feet parallel to the West line of said Section 16; thence North 89 degrees 42 minutes 29 seconds West 75.20 feet along the East and West 1/4 line of said Section 17; thence North 01 degrees 01 minutes 18 seconds East 25.02 feet along the Easterly right of way line of M-14 Highway; thence continuing along said right of way line 717.32 feet in the arc of a circular curve to the right, radius 1660.08 feet, central angle 24 degrees 45 minutes 27 seconds, and chord North 13 degrees 24 minutes 01 seconds East 711.76 feet; thence continuing along said right of way line North 25 degrees 46 minutes 45 seconds East 595.13 feet; thence South 00 degrees 24 minutes 44 seconds West 587.84 feet along the West line of said Section 16; thence North 87 degrees 57 minutes 55 seconds East 1846.70 feet along the South line of the North 1/2 of the South 1/2 of the Northwest 1/4 of said Section 16; thence South 04 degrees 47 minutes 06 seconds West 454.25 feet along the centerline of Pontiac Trail (66.00 feet wide) as monumented; thence South 87 degrees 50 minutes 56 seconds West 290.74 feet; thence South 02 degrees 09 minutes 04 seconds East 212.25 feet; thence South 87 degrees 50 minutes 56 seconds West 1530.95 feet along the East and West 1/4 line of said Section 16 to the Point of Beginning.

(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:

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

Trinitas Development, LLC

By: \_\_\_\_\_  
*Name, Title*

STATE OF MICHIGAN    )  
                                  ) ss:  
County of Washtenaw    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by Christopher Taylor, Mayor and Jacqueline Beaudry, City Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

STATE OF MICHIGAN    )  
                                  ) ss:  
County of Washtenaw    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_ of Trinitas Development, LLC, an Indiana limited liability company, on behalf of the company.

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