STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TRINITAS DEVELOPMENT, LLC, An Indiana limited liability company

Appellant,

V

CITY OF ANN ARBOR by the CITY OF ANN ARBOR CITY COUNCIL, a Michigan municipal corporation,

Appellee.

DICKINSON WRIGHT PLLC
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Judge Timothy P. Connors

Stephen K. Postema (P38871) Kevin S. McDonald (P61761) Office Of The City Attorney City of Ann Arbor Attorneys for Appellee 301 E. Huron Street PO Box 8674 Ann Arbor, MI 48107-8647 (734) 794-6170

CONSENT JUDGMENT

At a session of said Court held in the City of Ann Arbor, County of Washtenaw. State of Michigan, on;

PRESENT: HONORABLE TIMOTHY P. CONNORS
Circuit Court Judge

Upon the stipulation and consent of the Parties, by and through their respective attorneys, the Court finds:

A. MW Land, LLC, Michigan limited liability company ("MW") is the owner of 31.93 acres of real property located at 2601 Pontiac Trail, City of Ann Arbor, County of Washtenaw, State of Michigan (the "Property") which is more specifically described in the attached **Exhibit**A, which is incorporated into this Consent Judgment.

- B. Appellant, Trinitas Development LLC, an Indiana limited liability company ("Trinitas"), has entered into a purchase agreement with MW to purchase the Property.
- C. Appellees, City of Ann Arbor is a Michigan municipality located in Washtenaw County as established by the laws of the State of Michigan, and the City of Ann Arbor City Council is the City's governing body (collectively the "City").
- D. The City has adopted a zoning ordinance known as the Unified Development Code ("UDC") which has been amended from time to time. Pursuant to the UDC, the Property is zoned R4A Multiple-Family ("R4A").
- E. On or about May 17, 2017, Trinitas with the consent of MW submitted an application to the City for (1) site plan approval of a multi-family development, and (2) for a wetland permit (collectively "Site Plan/Wetland Application").

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- F. As set forth in the record on appeal, Trinitas amended the Site Plan/Wetland Application as it was being reviewed and considered by the City under the UDC.
- G. On or about September 17, 2018, the City denied approval of the Site Plan/Wetland Application as amended ("Site Plan/Wetland Permit Denial").
- H. On or about October 22, 2018 Trinitas with the consent of MW timely filed an appeal of the City's Site Plan/Wetland Permit Denial ("Trinitas Appeal").
- I. Trinitas with the consent of MW and the City after significant deliberation, now desire to settle and resolve the Trinitas Appeal in accordance with the terms and conditions of this Consent Judgment in order to avoid further costs and expenses and the uncertainty of the Trinitas Appeal and without any admission of liability and/or fault and/or wrongdoing and to provide for development, construction and use of the Property as provided in this Consent Judgment.
- J. The Parties agree that provisions of this Consent Judgment are contractual promises made by each of them and are binding on the Parties.

NOW THEREFORE, this Consent Judgment is presented to the Court pursuant to the stipulation and consent of the Parties, and the above findings which are incorporated into the Consent Judgment and the Court having determined that the Consent Judgment is reasonable and just, and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Added Party. MW in its capacity as the owner of the Property is added as party appellant and has agreed to execute this Consent Judgment and to be bound by its terms and conditions subject to its right to convey the Property to Trinitas. Upon written notice to the City from MW and Trinitas that the Property has been conveyed to Trinitas, MW shall be relieved and discharged from any obligations and duties to the City pursuant to the Consent Judgment and

shall not be deemed a Party to this Consent Judgment as that term is referred in the Consent Judgment except as to paragraph 17 of this Consent Judgment.

2. Zoning. The Property is currently zoned R4A. Nothing in this Consent Judgment shall prohibit or preclude the City from amending/changing the zoning district/zoning classification applicable to the Property, or exercising its legislative discretion in accordance with applicable law. Under the current R4A or any amended zoning of the Property or any amendment to the UDC, the use of the Property as authorized by this Consent Judgment shall be deemed to be lawfully conforming under the current R4A, and under any amendment to the R4A and under any amendment to the UDC and/or any code or ordinance replacing the UDC. By entry of this Consent Judgment, Trinitas shall be deemed to have fully vested rights to develop, construct and occupy the Property as authorized by this Consent Judgment. In the event, the Project is destroyed in whole or in part, Trinitas shall have the right to redevelop and reconstruct the Project and use and occupy the Property as authorized by this Consent Judgment.

3. Site Plan Approval. This Consent Judgment shall be deemed to constitute the City's final approval of the site plan prepared by Midwestern Consulting dated May 25, 2017, revised as of June 20, 2019 (the "Site Plan"), consisting of the following sheets: 1 through 14. 14A, 15 through 30, A110 through A116, A120 through A122. A200 through A206 and A 500 inclusive, attached as Exhibit B and incorporated herein. The development, and construction permitted by the Site Plan as authorized by this Consent Judgment (the "Project") includes, but is not limited to the following:

a) 211 Multiple (Multi) Family dwelling units as the terms are defined in the UDC, containing 682 bedrooms as follows: (i) 48 one-bedroom dwelling units, (ii) 36 two-bedroom dwelling units, (iii) 13 three-bedroom dwelling units, (iv) 47 four-bedroom dwelling units, and

- (v) 67 five-bedroom dwelling units. Under no circumstances shall any of the dwelling units contain more than five bedrooms and under no circumstances shall the total number of occupants in the 211 dwelling units exceed 690 occupants ("Occupancy Limit") unless otherwise required by applicable law and/or for children and/or for caregivers ("Occupancy Limit Exception"). In the event of an Occupancy Limit Exception, Trinitas shall provide written notice of such increase to the City Administrator within thirty (30) days after such increase. Subject to the Occupancy Limit and the Occupancy Limit Exception, dwelling units in the Project are authorized to be occupied by a maximum of six (6) occupants as provided by Section 5.16.1A.2.c of the UDC as in effect as of the date of this Consent Judgment. Occupants are not required to be related.
 - (b) A community building with outdoor pool and pool deck.
- (c) 422 vehicle parking spaces ("422 Initial Parking Spaces"), plus 137 reserved parking spaces ("Reserved Parking").
- (d) 24 Type A bike parking spaces as defined in the UDC, 90 Type B bike parking spaces as defined in the UDC and 180 Type C bike parking spaces as defined in the UDC.
- (e) Improvement to Pontiac Trail Road including a crosswalk on Pontiac Trail as described and depicted in the Trinitas Site Plan.
- (f) The installation of storm water systems, sanitary sewer systems, fire hydrants and water mains and water lines as depicted in the Trinitas Site Plan.
- (g) The installation of interior roads/driveways and walkways as depicted in the Trinitas Site Plan.
- (h) Open space (excluding 9.86 acres of Parkland to be conveyed to the City) as depicted in the Trinitas Site Plan.

- (i) Such other improvements and structures as depicted and described in the Trinitas Site Plan.
- 4. Wetland Permit Approval. This Consent Judgment shall be deemed to constitute final approval of a wetland permit for the Project to impact, develop and use 2200 square feet of wetland and 4080 square feet of wetland mitigation as depicted in the Site Plan.
- 5. No Other City Approvals. For purposes of clarity, other than applying for and obtaining Permits and approvals provided for in this Consent Judgment and the Development Agreement as referenced in paragraph 6 of this Consent Judgment, no other City approvals are required for Trinitas to develop, construct, use and occupy the Property as authorized by this Consent Judgment.
- 6. Development Agreement. Upon entry of this Consent Judgment, Trinitas and the City shall execute a development agreement pertaining to the development and construction of the Project ("Development Agreement") in the form and substance attached as Exhibit C, which shall not take effect until such time as Trinitas purchases the Property and provides written notice of the same to the City. In the event Trinitas does not purchase the Property within five (5) years of the date of entry of the Consent Judgment, the Development Agreement shall be deemed to be null and void and without effect. The Development Agreement shall be binding on both the City and Trinitas and their respective grantees, successors, assigns, vendees and trustees and shall run with the land. The Development Agreement shall be recorded by the City with Washtenaw County Register of Deeds.
- 7. Conveyance of Parkland. Trinitas has offered to convey 9.86 acres of land to the City for a public park ("Parkland") as more specifically described in Exhibit D attached hereto and made a part hereof. The City shall have 24 months from the date Trinitas provides written notice

to the City that Trinitas has purchased the Property to provide written notice to Trinitas ("Notice to Acquire") that the City wants to acquire the Parkland from Trinitas. In the event the City does not provide timely Notice to Acquire, the City shall be deemed to have irrevocably waived the right to acquire the Parkland from Trinitas. In the event the City timely provides the Notice to Acquire, Trinitas shall convey the Parkland to the City by warranty deed ("Warranty Deed"), "as is and where is" without any representations or warranties from Trinitas as to the physical and/or environmental condition of the Parkland and the suitability of the Parkland. The City shall be deemed to have waived and released any and claims and actions of any type and kind against Trinitas arising from and relating to the physical and environmental condition of the Parkland. The Warranty Deed from Trinitas to the City shall contain a restrictive covenant limiting the use of the Parkland solely as a public park ("Park Only Restriction"). The Park Only Restriction shall be binding on the City and its successors and assigns and shall burden and run with the Parkland for the benefit of the Property and for the benefit of Trinitas and its successors, assigns and grantees. At the time Trinitas conveys the Parkland to the City it shall also grant such easements with regard to the Parkland as provided for in paragraph P-8 of the Development Agreement.

8. On-Site Parking. The Site Plan identifies the 422 Initial Parking Spaces to be constructed during the initial construction of the Project. In addition to the 422 Initial Parking Spaces, the Site Plan identifies 137 vehicle parking spaces ("137 Reserve Parking Spaces"). The 137 Reserve Parking Spaces, if constructed, shall be constructed with porous materials as defined in Section 5.19.8 E. of the UDC, provided that in no event shall gravel, wood chips or other similar material be used as the porous materials with the exception that gravel may be used as the base for the porous materials. Trinitas shall have the right to request the City Planning Manager for authorization to proceed to construct one-half (1/2) or all of the 137 Reserve

Parking Spaces after providing written notice and supporting documentation to the City's Planning Manager that Trinitas has leased or reasonably anticipates leasing all 422 Initial Parking Spaces. The City Planning Manager or administrative designee shall review the written information provided by Trinitas, and determine, in his/her reasonable discretion, whether one-half (1/2) or all of the Reserve Parking Spaces are required under the existing circumstances.

In the event that the City receives written complaints that tenants and guests of tenants from the Project are parking on adjacent residential streets due to insufficient parking at the Project, the City shall provide Trinitas written notice of said tenant/tenant guest parking and the evidence thereof, whereupon Trinitas shall have 60 days to provide written proof to the City that Trinitas has cured/stopped said tenant/tenant guest parking. In the event Trinitas has not cured/stopped the tenant/tenant guest parking then the City shall have the right to provide written notice requiring Trinitas construct one-half (1/2) or all of the 137 Reserve Parking Spaces, in the City's reasonable discretion.

9. Utilities, Streets and Infrastructure. Trinitas shall be permitted to connect to the City's sanitary, water and storm sewer lines and systems and shall be permitted to access City roads/streets as shown in the Site Plan upon compliance with Paragraph 10 below.

10. Permits. The City staff as designated by the Ann Arbor City Code or the City Administrator shall issue building/construction permits and all other necessary permits including, but not limited to occupancy permits ("Permits") to enable Trinitas to construct, use and occupy the Project as shown in the Site Plan after submission of the necessary applications, and payment of all permit fees. Review and approval of the Permits by the City staff shall not be unreasonably withheld and/or delayed. No further approval of the Planning Commission or the

City Council (other than the decision related to the Park Conveyance under paragraph 6 above) shall be required for the Project.

- 11. Binding Effect. This Consent Judgment is deemed to have been mutually drafted by the Parties and is binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors, grantees, trustees, departments, commissions, employees, successors in interest and/or assigns without limiting the generality thereto.
- 12. Recordation. This Consent Judgment shall be recorded by Trinitas in the office of the Register of Deeds of Washtenaw County and shall be deemed a covenant running with the land. A true copy of the recorded Consent Judgment shall be provided by Trinitas to the City.
- 13. Assignment. Trinitas shall have the right to assign this Consent Judgment along with the Development Agreement and its rights and obligations pursuant to the Consent Judgment upon written notice to the City Administrator. Upon Trinitas (1) payment of \$346,000.00 to the City as provided in the Development Agreement, (2) receipt of a final certificate of occupancy for the final dwelling unit, (3) receipt of replacement bonds from the assignee/successor in the event Trinitas has any bonds with the City and (4) receipt of City approvals (as provided by this Consent Judgment and the Development Agreement), of the Improvements, wetland mitigation, Woodlands Restoration, street trees to be planted and woodland and landmark trees to be saved, then in the event of assignment of this Consent Judgment and the Development Agreement, Trinitas shall be released and discharged from this Consent Judgment.
- 14. <u>Notice.</u> Any written notice required under this Consent judgment shall be sent by first class mail, by a recognized national overnight delivery service, by facsimile, or by email, to the following addresses and persons unless such designation is changed by written notice:

To: City of Ann Arbor
Attention: City Administrator and City Attorney
301 East Huron Street
Ann Arbor, Michigan 48107
SPostema@a2gov.org
(734) 794-6170

To: Trinitas Development, LLC
Attention: Loren P. King
201 Main Street, Suite 1000
Lafayette, Indiana 47906
lpking@trinitas.ventures
(765) 807-2718

15. Continuing Jurisdiction. This Court retains continuing jurisdiction to assure and enforce compliance with the terms of this Consent Judgment and/or the Development Agreement. In the event of a proceeding to enforce the Consent Judgment, the prevailing Party may seek to recover costs and reasonable attorney fees in addition to such other relief and applicable relief including injunctive relief and specific performance.

16. Occupancy Documentation and Enforcement. For purposes of the Occupancy Limit and the Occupancy Limit Exception, City and the Trinitas are subject to the following:

- a) By March 1st and October 1st of each year, Trinitas shall provide the City Planning Manager written rent rolls for the Project identifying the occupancy (1) of each dwelling unit, (2) of each building, and (3) of the total Project. Trinitas shall be entitled to redact the names of the occupants/tenants and personal information regarding the occupants/tenants from the rent rolls provided to the City Planning Manager.
- b) Trinitas' leases shall contain terms identifying the maximum occupancy of each dwelling unit in accordance with this Consent Judgment, and the R4A zoning district as set forth in UDC as of the date of this Consent Judgment, with an express exemption allowing for short-term occupancy for guests not exceeding seven (7) days.

- c) Following seven (7) days prior written notice to Trinitas, the Building Official in accordance with City's Housing Code, Section 8.511 shall have the right during business hours to inspect the dwelling units at the Project. Such inspection of the dwelling units at the Project shall be limited to one time each year.
- d) Subject to prior or contemporaneous oral or written notice to Trinitas, the Building Official shall have the right to enter the Property grounds, but not the dwelling units or other areas of the Project available for the exclusive use of the Project occupants and their guests, to evaluate compliance with the Occupancy Limit and Exception to Occupancy Limit.
- e) In the event the City receives a complaint that the occupancy at the Project exceeds the Occupancy Limit and the Occupancy Limit Exception, the City upon twenty-four (24) hours prior written notice to Trinitas shall have the right to inspect the dwelling unit(s) alleged to be causing the violation of the Occupancy Limit and Occupancy Limit Exception, and the Building Official shall be entitled to seek and obtain from Trinitas a copy of all leases for said dwelling unit(s) which shall be provided by Trinitas to the Building Official within seventy two (72) hours from written notice requesting a copy of said leases. Before delivering the requested leases to the Building Official, Trinitas shall have the right to redact the names of the occupants and any terms in said lease which Trinitas reasonably determines to be private and/or personal.
- f) In the event the City determines that the Occupancy Limit and Exception to Occupancy Limit is being exceeded at the Project, it shall provide written notice of the same to Trinitas ("Occupancy Notice"). Upon receipt of the Occupancy Notice, Trinitas shall have seven (7) days to respond to the Occupancy Notice, by providing written verification to the Building Official that there is no violation of the Occupancy Limit and Exception to the Occupancy Limit, or by confirming that the violation was caused by a tenant without the consent of Trinitas

("Tenant Occupancy Violation") and that Trinitas is implementing steps as provided by law to remedy the tenant caused violation of the Occupancy Limit and Occupancy Limit Exception and shall thereafter provide written notice to the Building Official that the Tenant Occupancy Violation has been cured. In the event the Occupancy Limit and Occupancy Limit Exception (which is not a Tenant Occupancy Violation) is knowingly agreed to or authorized by Trinitas or Trinitas had actual knowledge of the Tenant Occupancy Violation and Trinitas did not diligently, and lawfully attempt to remedy the Tenant Occupancy Violation ("Trinitas Violation"), then Trinitas shall pay the City a fine of two (2) times the average annual rental rate for one (1) bedroom in the Project in effect at the time of the Trinitas Violation ("Trinitas Fine") for each Trinitas Violation. The payment of the Trinitas Fine to the City shall be in lieu of such other rights any remedies available to the City under the Ann Arbor City Code, with the exception that the City may seek a court order or injunctive relief to end the Tenant Occupancy Violation.

17. Mutual Release from Liability. Trinitas and MW for themselves and their respective officers, owners, members, partners, shareholders, directors, trustees and employees, independent contractors, attorneys, consultants successors and assigns and the City for itself, its employees, elected officials, boards, commissions, independent contractors, trustees, employees, consultants and attorneys, mutually release and forever discharge each other of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, attorney fees, under any federal, state or other statutes, regulations, executions, damages and rights of whatever nature in law, equity or otherwise, which now exist or which may subsequently accrue by reason of any acts arising out of or related to this Appeal and existing as of the date of the this Consent Judgment, whether known or unknown on that date. This mutual release shall not bar claims and actions to enforce this Consent Judgment all of which are fully preserved.

- **18.** Amendment of Terms. The terms of this Consent Judgment may not be amended except by mutual consent of the Parties and a stipulation entered with the Court.
- 19. Minor Modifications. Notwithstanding the foregoing, Trinitas may apply to the City Planning Manager or administrative designee for administrative amendments to the Site Plan pursuant to Section 5.29.6.(A)(3) of the UDC which do not (i) increase the number of dwelling units, (ii) increase the number of bedrooms, (iii) decrease open space, (iv) decrease landscape and tree planting requirements, (v) increase impervious surface, (vi) increase building height, (vii) increase any building footprint without a compensating equal reduction in another building footprint, (viii) change the type and number of bike parking spaces and (ix) materially change the design elevations of the buildings.
- 20. Shuttle Buses. Trinitas shall provide two (2) private shuttle buses for use by the tenants of the Project which shall operate Monday through Friday from 7:00 a.m. to 7:00 p.m., with extend hours on weekends on such schedule as reasonably determined by Trinitas. Trinitas shall review the shuttle service on a regular basis, but no less than annually, for the purpose of providing reasonably efficient and effective shuttle schedules for tenants of the Project. Trinitas shall designate the location of the shuttle service on the Site Plan and shall also identify on the Site Plan five (5) rideshare/carpool parking spaces near the clubhouse. In the event Trinitas determines that there is insufficient tenant demand and use of the shuttle service, Trinitas shall have the right to request that the City Administrator allow a reduction in said shuttle service, which shall not be unreasonably denied.
- 21. Green Initiatives for Clubhouse, Residential Buildings and Pontiac Trail

 Property. Trinitas shall incorporate the green elements into the Project which are identified and attached as Exhibit E and incorporated herein ("Green Items").

- 21. No Parking Lease Provision. Trinitas shall include in all tenant leases a provision that shall prohibit parking in adjacent neighborhoods.
- 23. Authority and Full Understanding. The Parties to this Appeal represent to this Court that they have fully read the Consent Judgment, have discussed it with their respective legal counsel and fully understand the terms and conditions thereof. Each person signing the Consent Judgment on behalf of any Party, hereby represents and warrant that he/she is a duly authorized representative and agent of the respective Party, and she/he has full authority to bind said Party to the covenants, warranties, representations and obligations of this Consent Judgment.
- 24. Future Use. The terms of this Consent Judgment shall not be deemed to prevent Trinitas and/or its successors, grantees, transferees, and assigns from developing, redeveloping, constructing and occupying the Property for such other uses, and buildings as are permitted and authorized in accordance with applicable law including, but not limited to the UDC.
- <u>25. Clerical Errors.</u> Any clerical errors or mistakes in document or exhibit descriptions contained in this Consent Judgment, may be corrected by the Parties and all Parties agree to cooperate in making such corrections in order to effectuate the intent and purpose of this Consent Judgment.
- **26. Execution of Consent Judgment.** This Consent Judgment may be executed by the Parties in counterparts, and pages containing the original signatures shall be attached to the Consent Judgment filed with the Court, photocopies and scanned signatures of the Parties hereto, shall be deemed duplicate signatures.
- 27. Conflicting Provisions. To the extent the terms of this Consent Judgment conflict with the UDC and any other codes and ordinances of the City and the terms and conditions of the

Development Agreement, the terms of the Consent Judgment shall apply and govern the Parties. To the extent that the Consent Judgment is silent on issues regulated by the UDC and applicable codes and ordinances and the Development Agreement, the City UDC, codes and ordinances and Development Agreement shall control, provided that in no event shall any application of the UDC and/or any code and/or ordinance and/or the Development Agreement require and/or cause a reduction in the number of (1) occupants, (2) dwelling units and (3) bedrooms set forth in the Consent Judgment and Site Plan and/or the use and occupancy of the Property as a R4A multiple dwelling project as authorized by this Consent Judgment.

28. Good Faith Cooperation. The parties and their respective successors and assigns shall treat each other in good faith and shall not take any action which is contrary to or interferes with the spirit of this Consent Judgment, or fail to take any action which is necessary or consistent with the spirit and intent of this Consent Judgment. Time is of the essence.

29. Effective Date of this Consent Judgment. The Consent Judgment shall become null and void in the event Trinitas does not purchase the Property and provide written notice to the City Administrator that it has purchased the Property within five (5) years from the date the Consent Judgment. Trinitas shall provide written notice to the City Administrator within thirty (30) days from the date it has purchased the Property.

THIS CONSENT JUDGMENT RESOLVES ALL PENDING CLAIMS AND CLOSES THIS CASE

SIGNATURE PAGE IS THE NEXT PAGE

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SIGNATURE PAGE FOR THE CONSENT JUDGMENT

	Circuit Court Judge				
Approved:					
Trinitas Development, LLC	City of Ann Arbor				
By:(Print)(Print)	By:Christopher Taylor				
Its: Managing Member	Its: Mayor				
Dated:	Dated:				
	By:				
	Jacqueline Beaudry				
	Its: City Clerk				
	Dated:				
And By Its Attorneys:					
Dickinson Wright, PLLC	Office of the City Attorney				
By: Timothy A. Stoepker (P31297) 200 Ottawa Avenue, NW, Ste. 1000 Grand Rapids, Michigan 49503 (616) 458-1300	By: Stephen K. Postema (P38871) 301 E. Huron Street, P.O. Box 8647 Ann Arbor, Michigan 48108 (734) 794-6170 Rosati, Schultz, Joppich & Amtsbuechler, PC				
	Carol A. Rosati (P32288) Timothy S. Wilhelm (P67675) Matthew J. Zalewski (P72207) Attorneys for Appellee 27555 Executive Drive, Suite 250 Farmington Hills, MI 48331-3550 (248) 489-4100				

EXHIBIT A PROPERTY DESCRIPTION

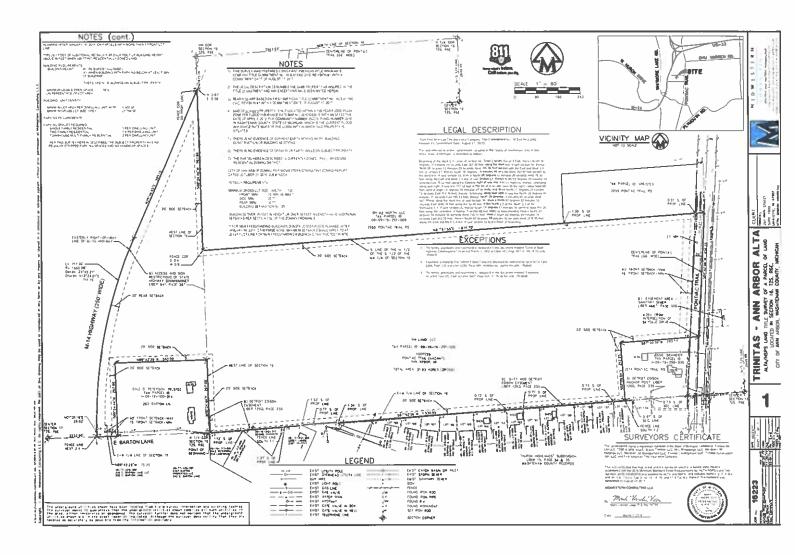
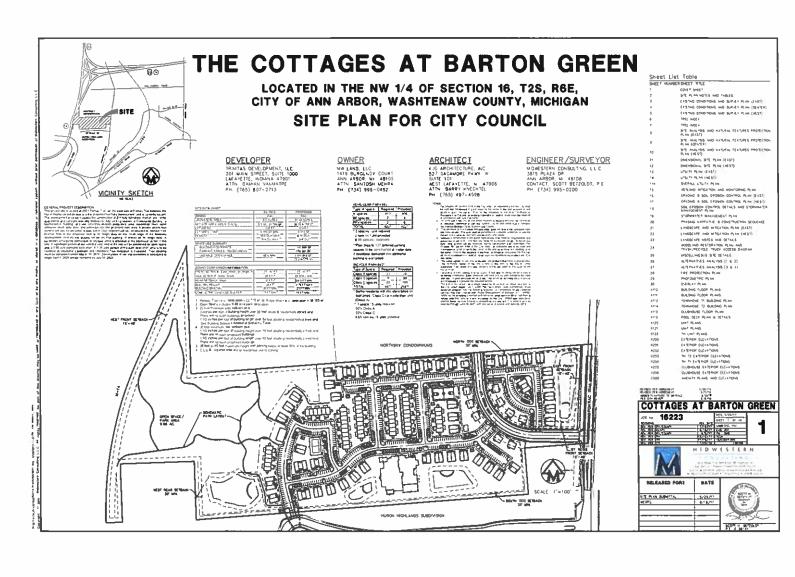


EXHIBIT B SITE PLAN



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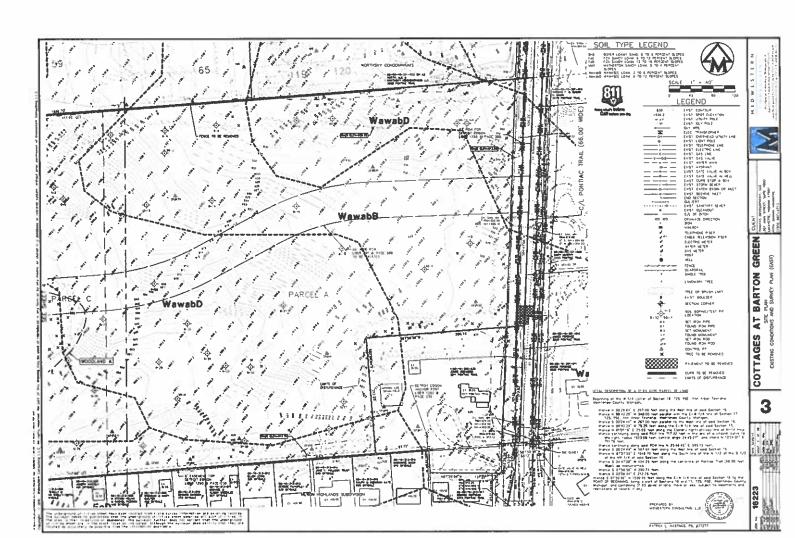
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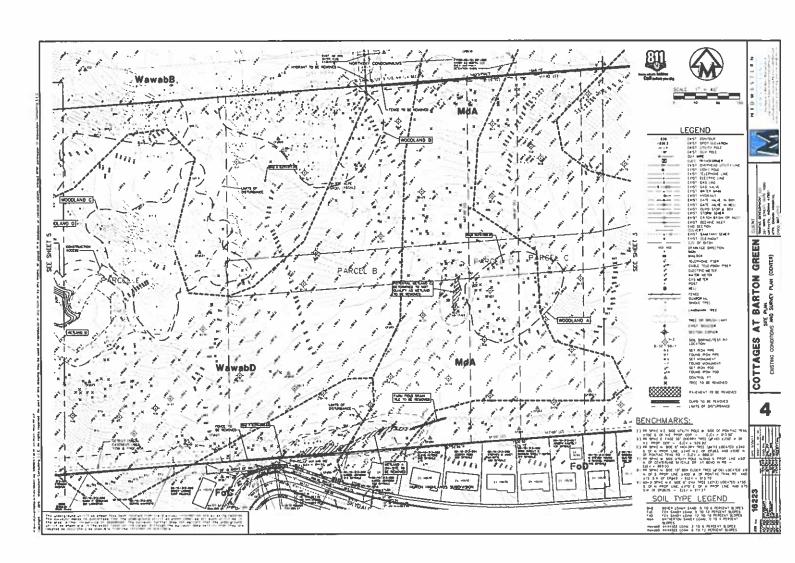
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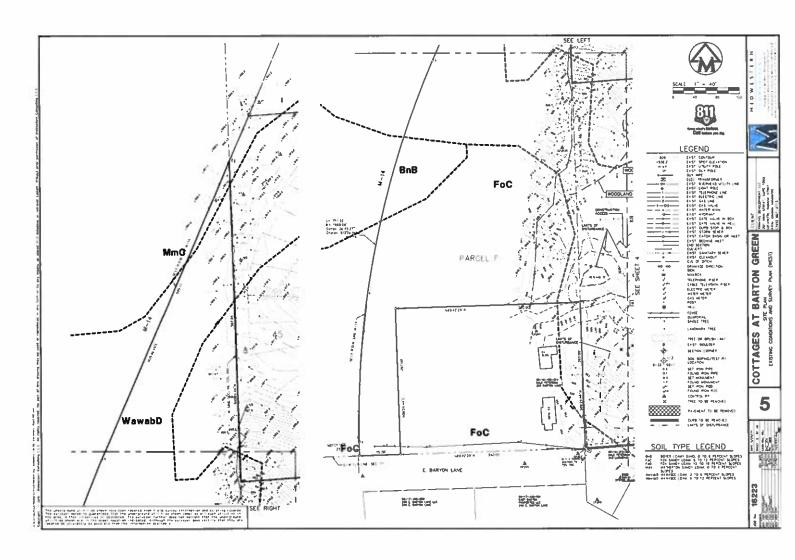
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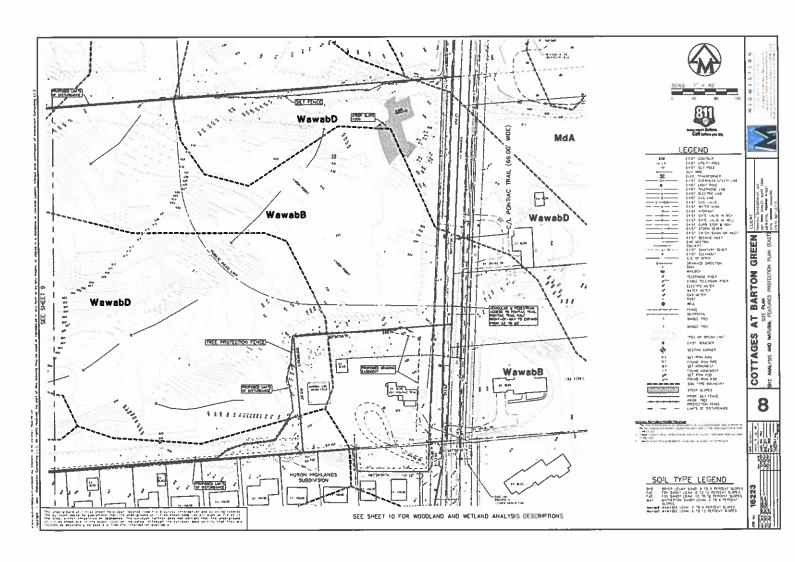
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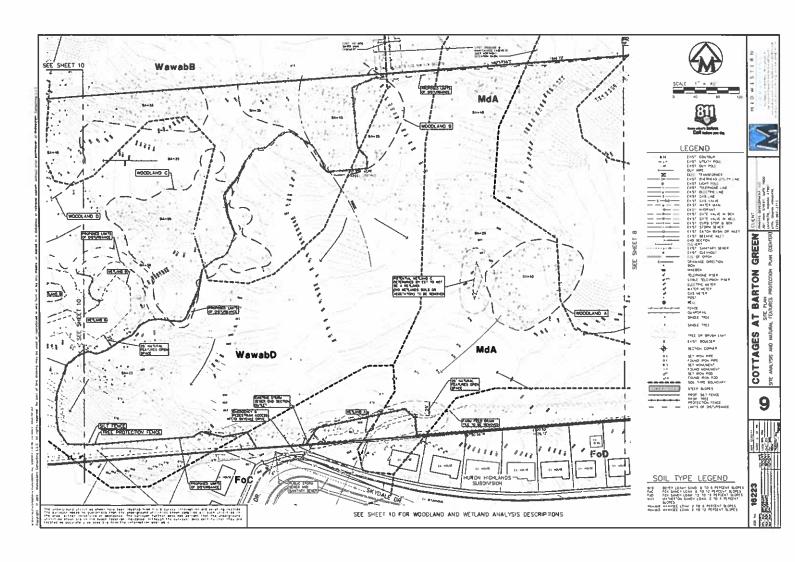
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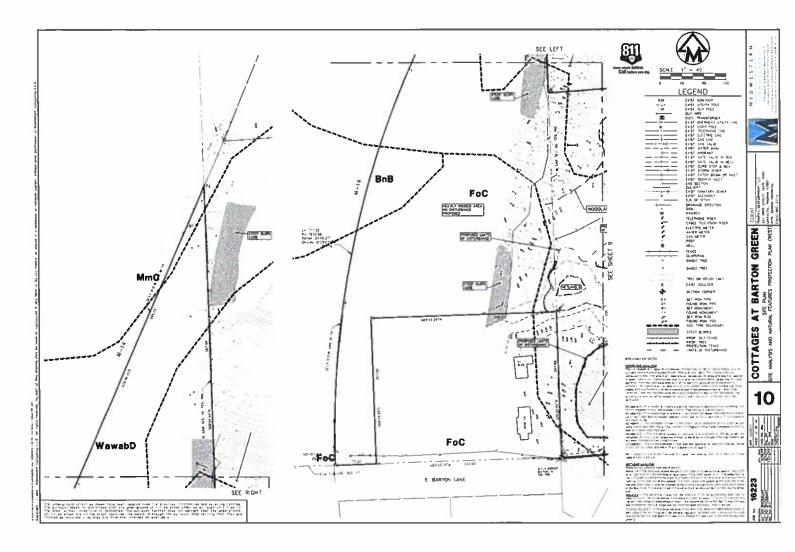
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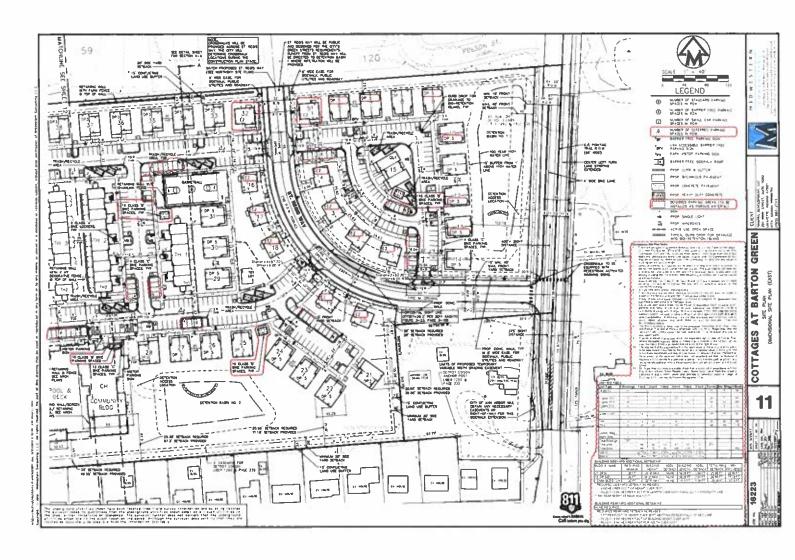
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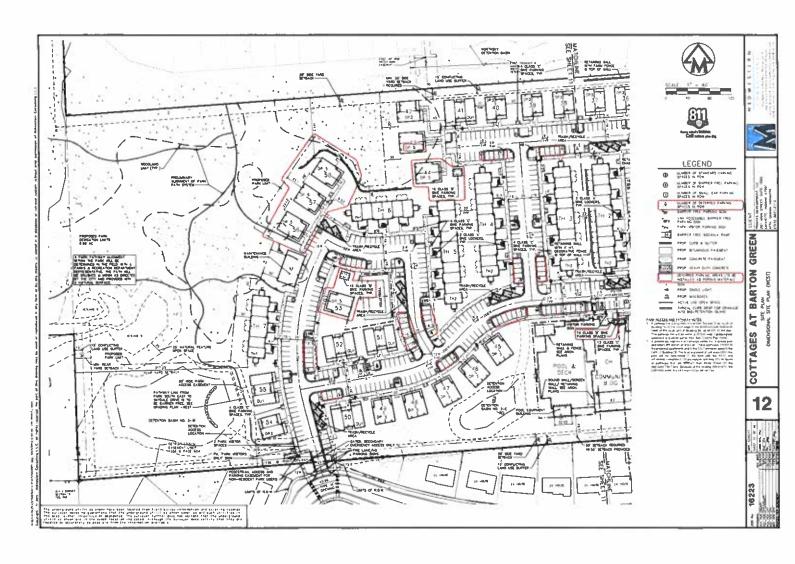


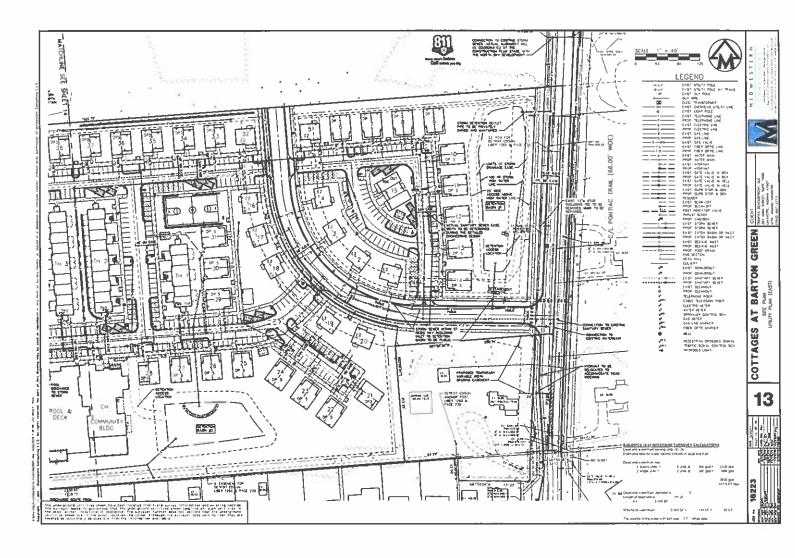


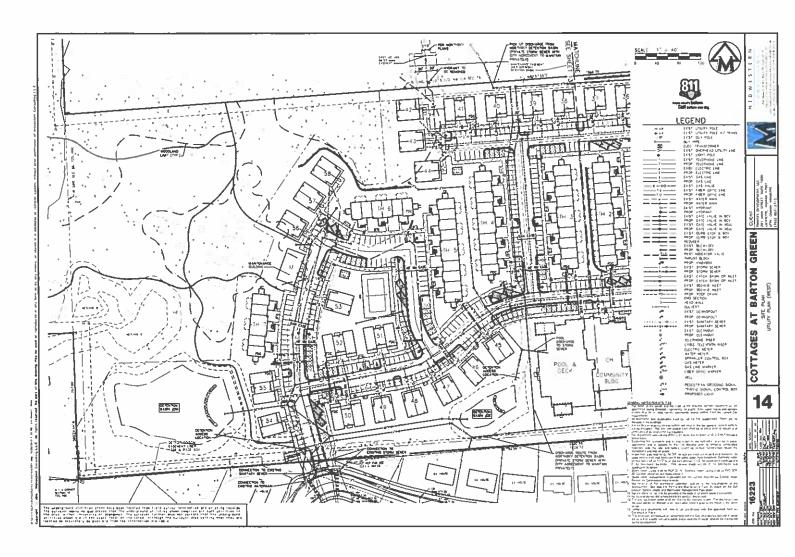


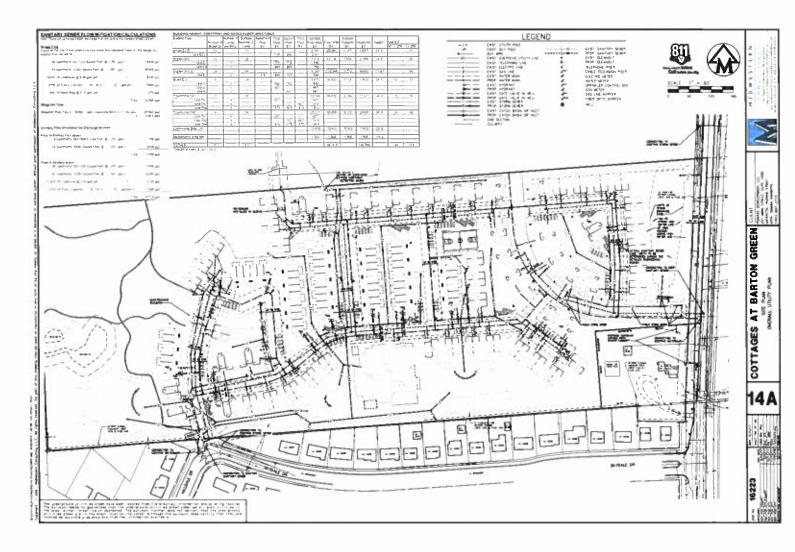


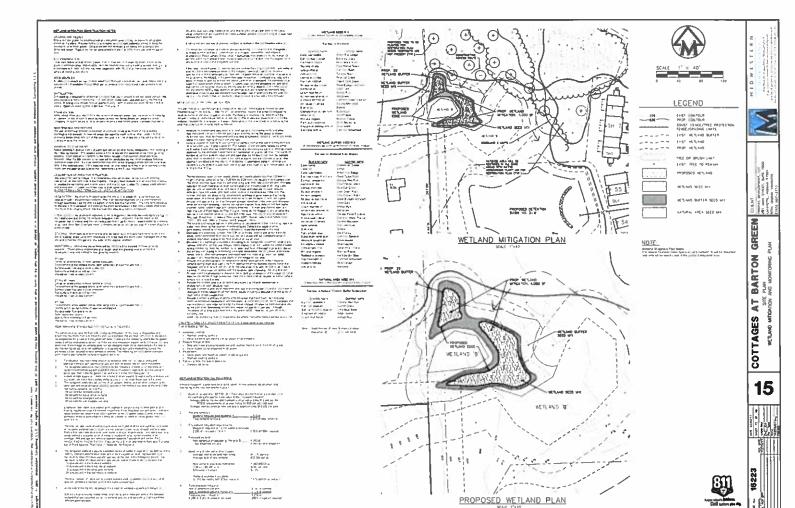






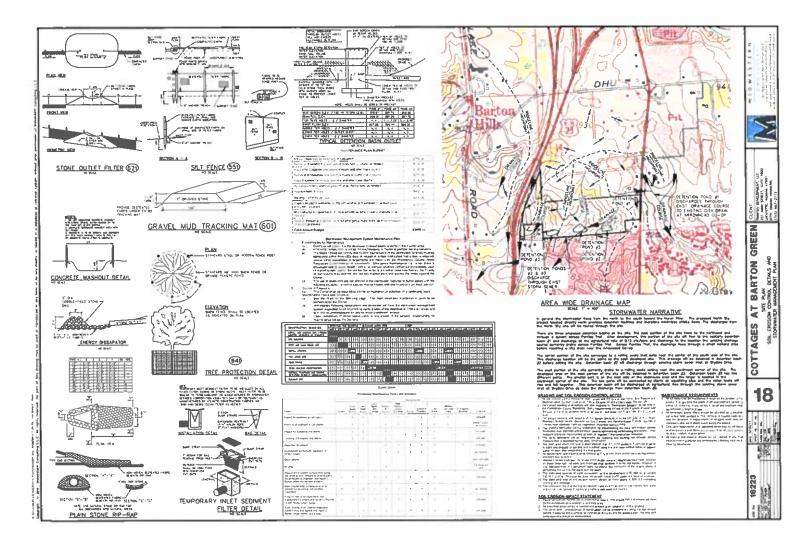


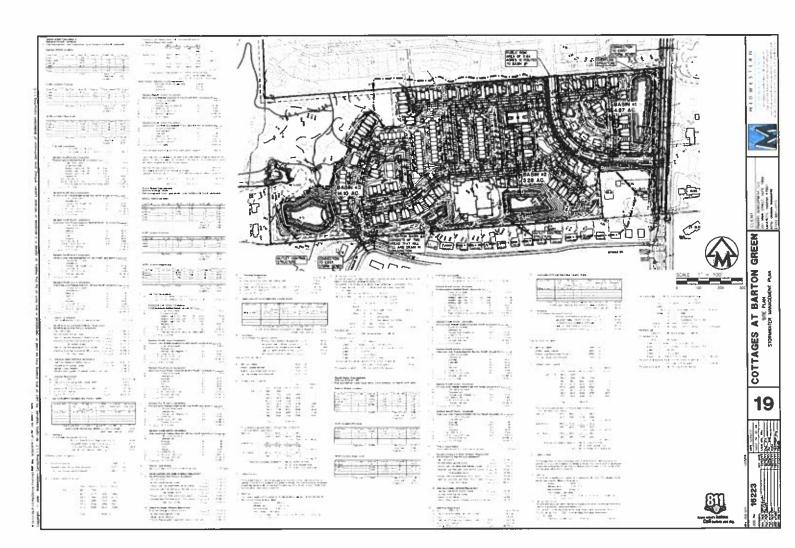


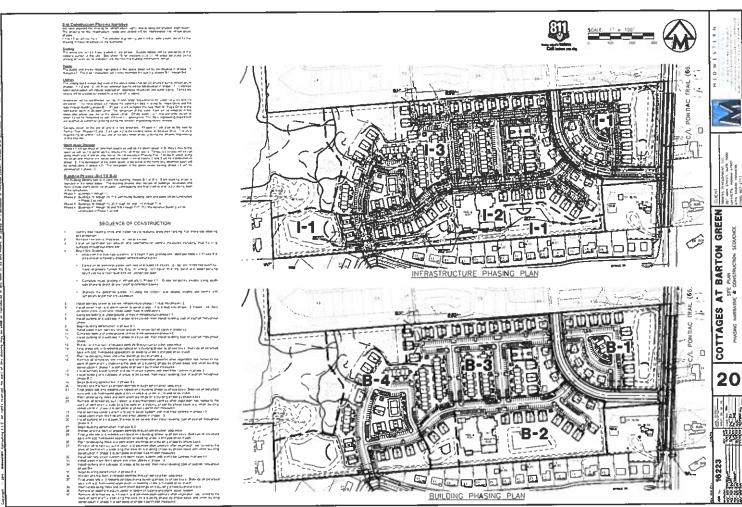




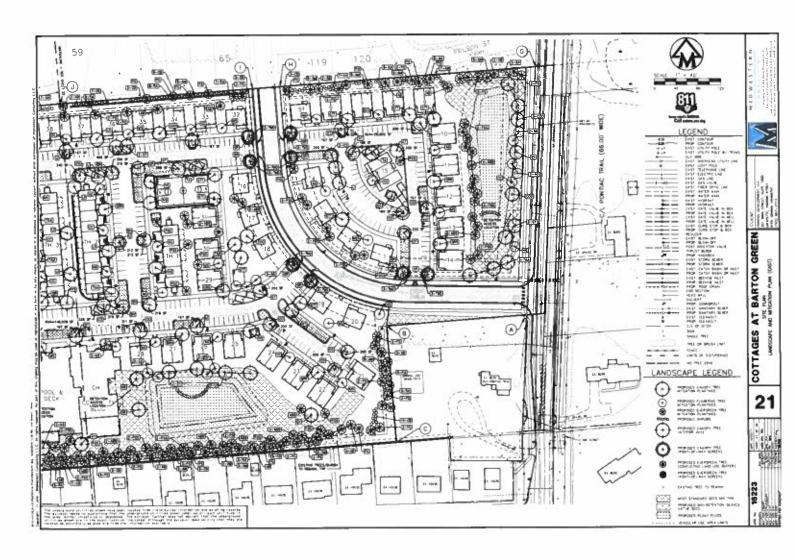


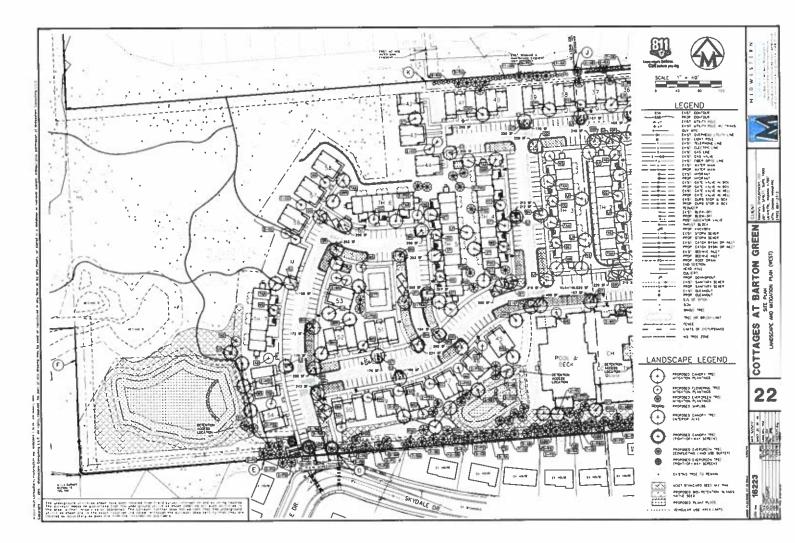


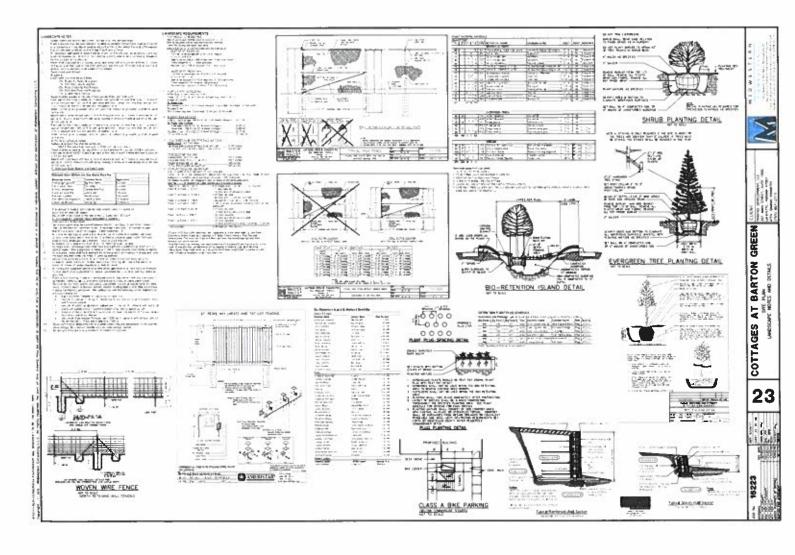


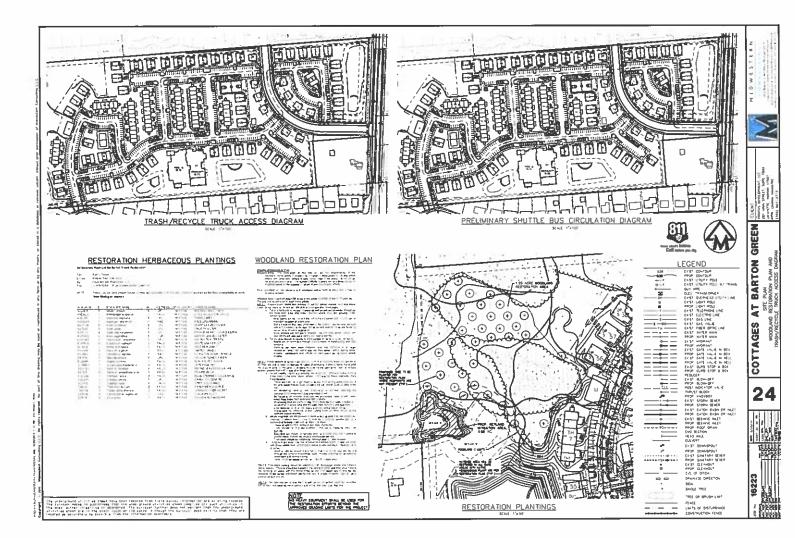


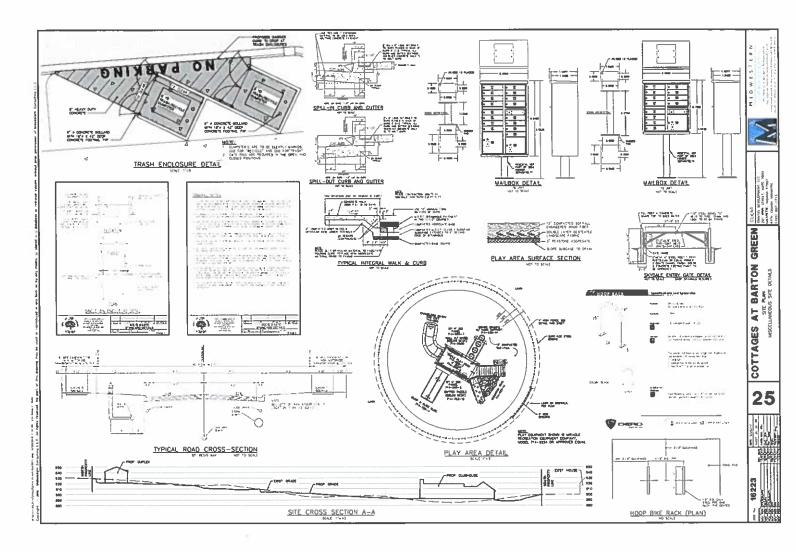
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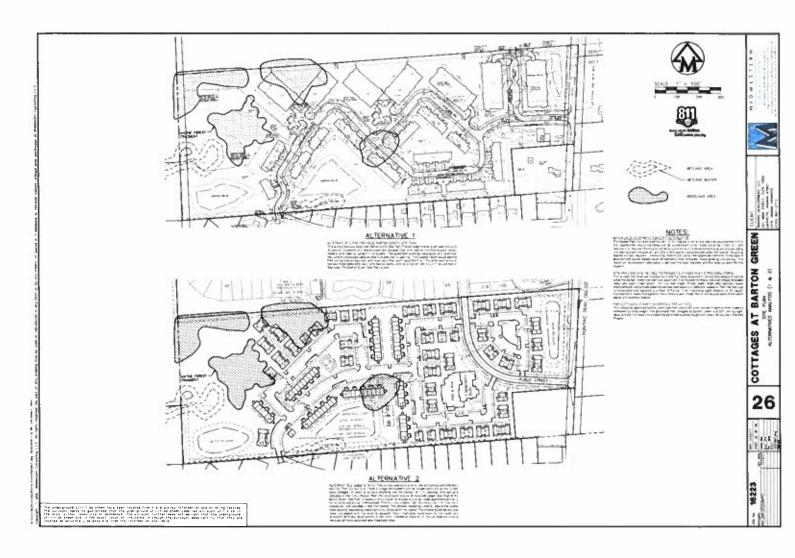


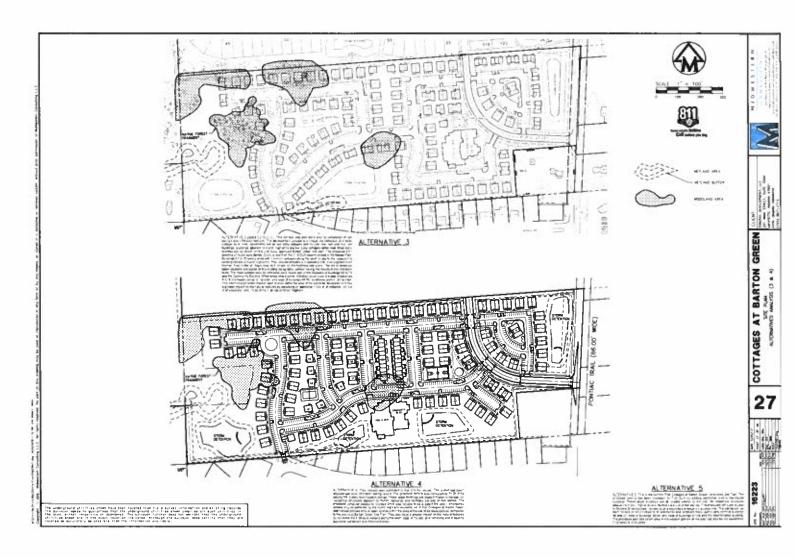


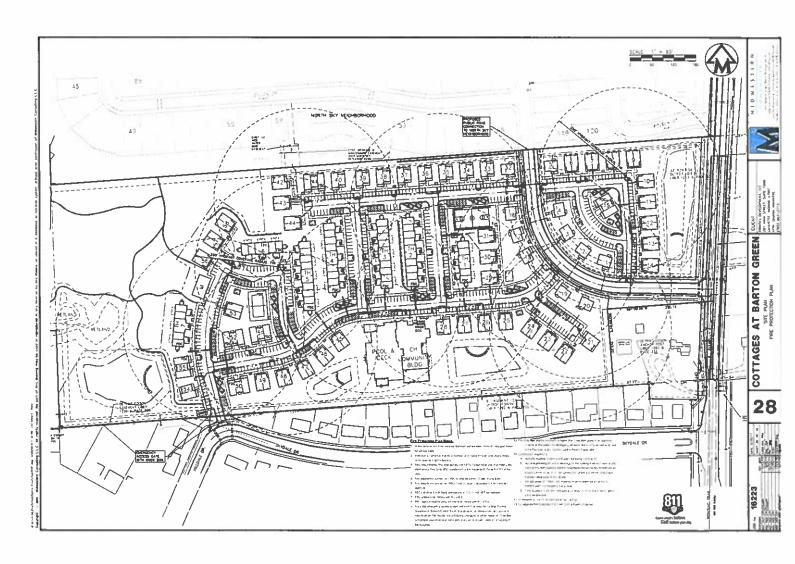


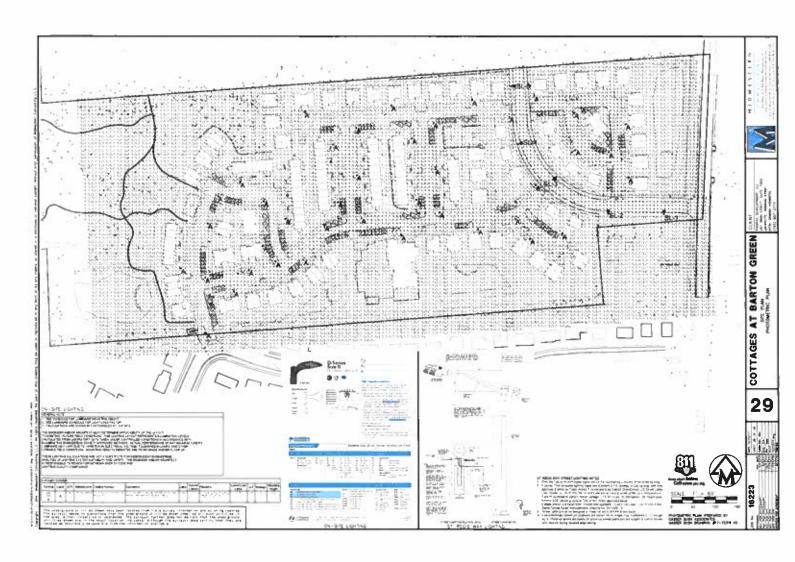


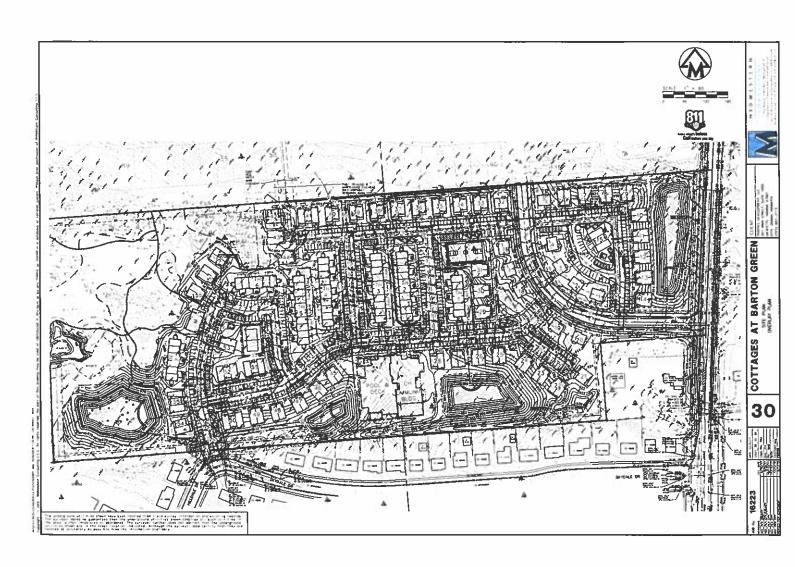


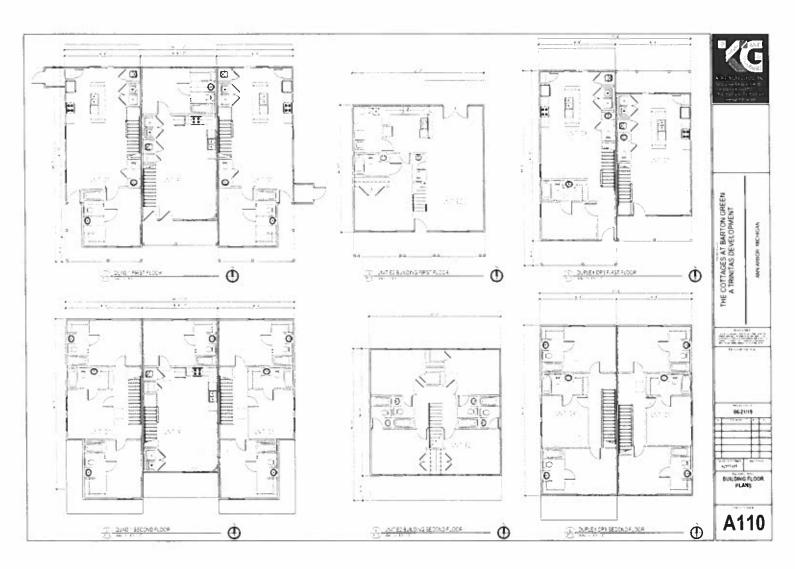


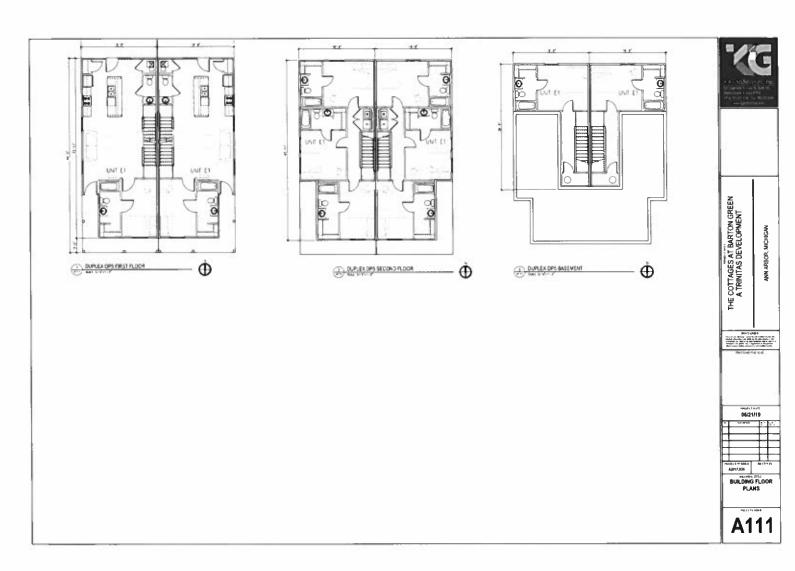


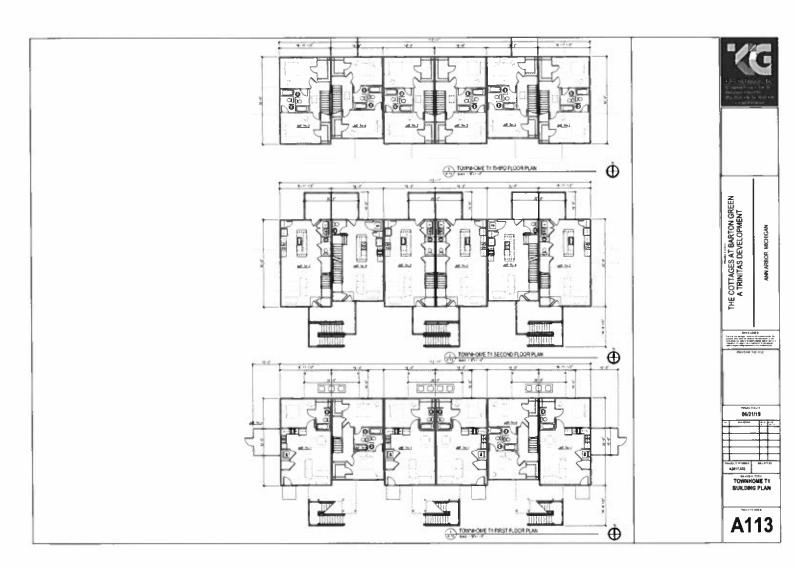


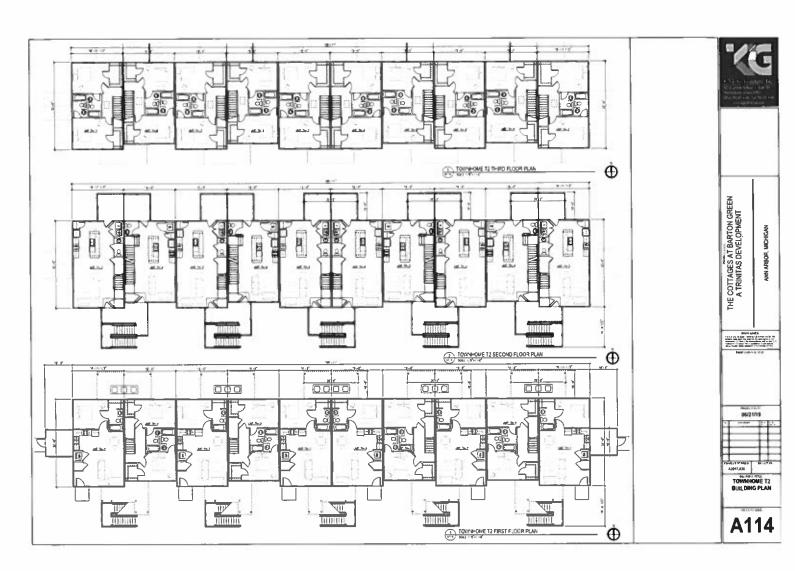


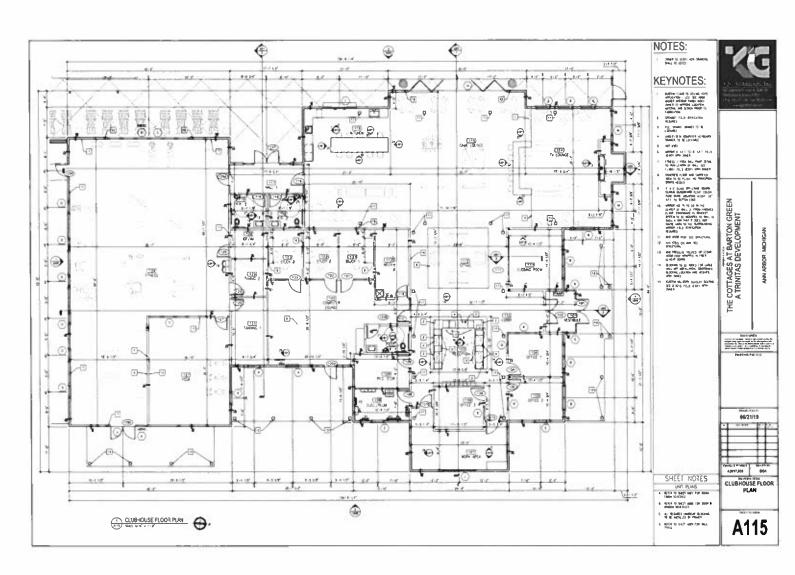


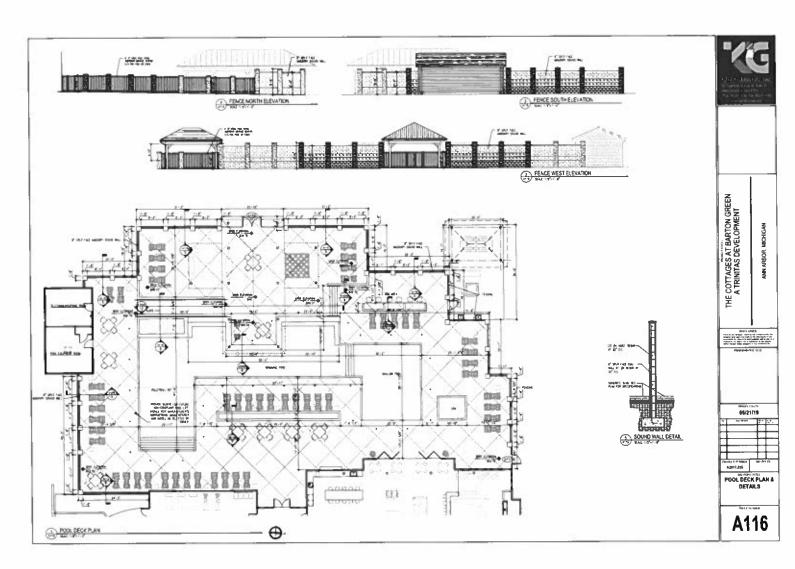




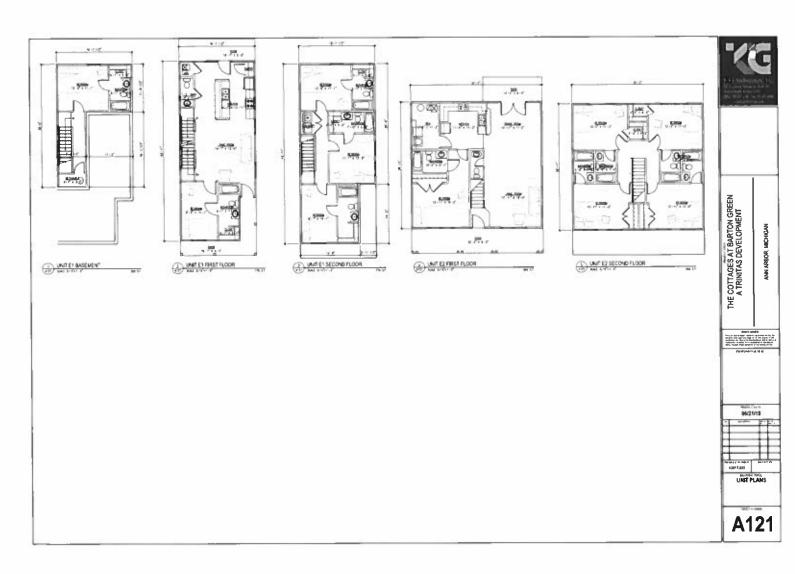


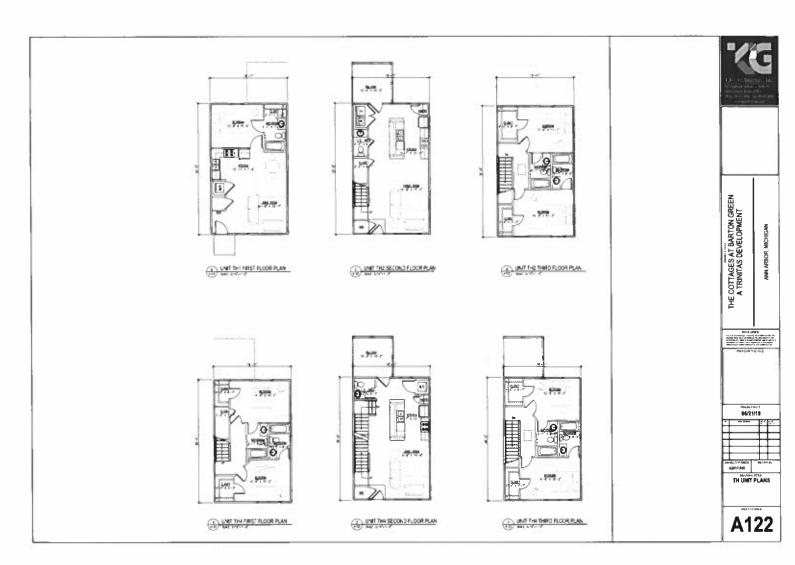








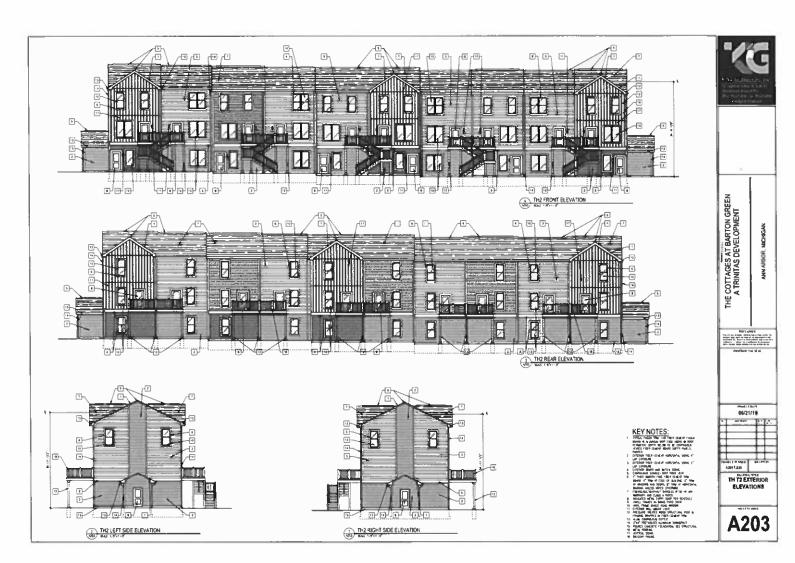




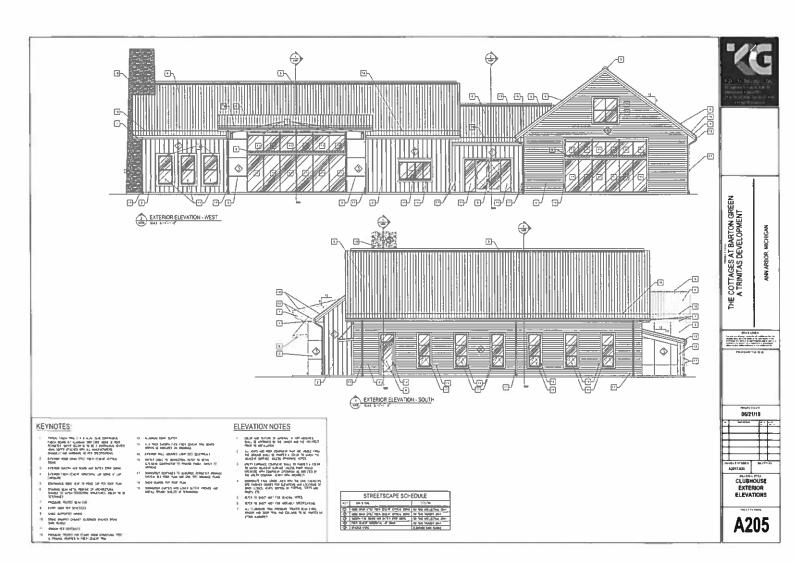


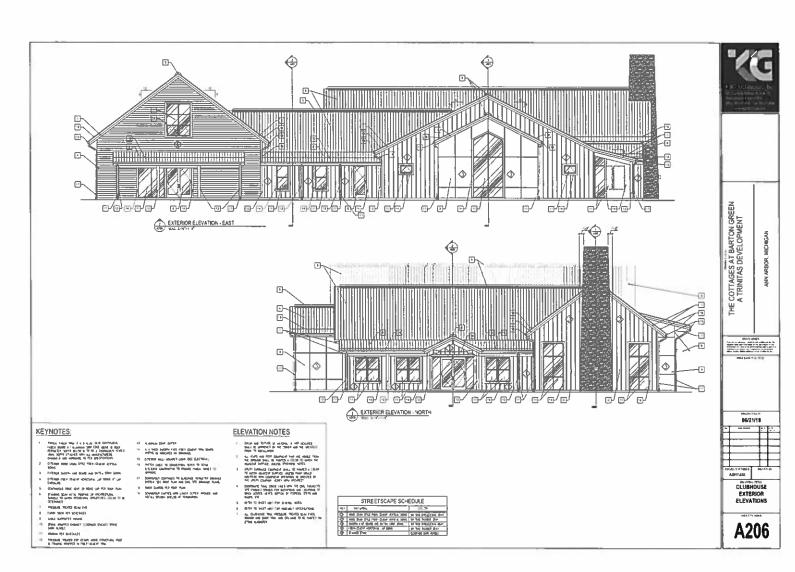












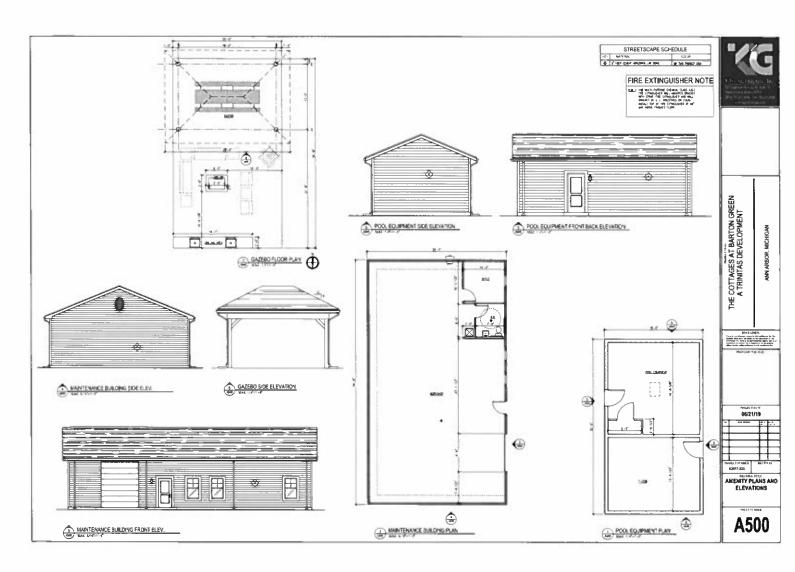


EXHIBIT C DEVELOPMENT AGREEMENT

THE COTTAGES AT BARTON GREEN DEVELOPMENT AGREEMENT

THIS AGREEMENT, made tand between the City of Ann Arbor,	this day of	, 2019 ("Agreement"), b
and between the City of Ann Arbor, 301 East Huron Street, Ann Arbor, Development, LLC, an Indiana limit Street, Suite 201, Lafayette, Indiana	Michigan 48107, hereina ed liability company, with	fter called the CITY, and Trinitas principal address at 201 Main
that:	., ., ,	••••••••••••••••••••••••••••••••••••••
WHEREAS, the DEVELOPE paragraph T-4 below (the "Pontiac" Green (the "Project), and		he City of Ann Arbor, described in planned as The Cottages at Bartor
WHEREAS, the DEVELOPE mapped and site planned as The C approval and development agreem	ottages at Barton Green,	
WHEREAS, on	nit ("Site Plan") and Agree aw County Circuit Court i	
WHEREAS, the CITY desire Agreement and required by pertine that the DEVELOPER will install the	nt CITY ordinances and	

THE DEVELOPER HEREBY AGREES:

- (P-1) To prepare and submit to the CITY Public Services Area 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 commence until the City Public Services Area has received relevant information reasonably requested related to City specifications, regulations and codes and until the Plans have been approved by the City Administrator or designee in accordance with City specifications, regulations and codes.
- (P-2) In the event the Developer constructs the Project, Developer agrees (1) to construct all Improvements in accordance with the approved Plans, and (2) to repair all defects in the Improvements that occur within one year from the date of acceptance of the

Improvements by the CITY Public Services Area, commencing on the latest date of the acceptance of any Improvements by the CITY Public Services Area. If the Developer elects to construct the Project, and thereafter, 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 Improvements to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the Improvements 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, regulations and codes 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 public utilities and public streets as shown on the Site Plan and approved construction drawings, subject to City Council approval which approval shall not unreasonably be withheld or delayed. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easements shall be executed by the DEVELOPER and submitted to the City Attorney on behalf of the City Council prior to the 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, regulations and codes 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) At or prior to such time as foundations are being constructed pursuant to foundation permits as approved by the City Public Service Area in accordance with the Site Plan, and City specifications, regulations and codes, Developer shall also install all water mains, storm sewers, and sanitary sewers in accordance with the Plans approved by the CITY Public Service Area through the first course of asphalt for each phase of the development, necessary to connect the site, or phase as applicable, with existing CITY systems adjacent to the site prior to the issuance of any building permits for that phase of the development as shown on the Site Plan, or at a later time as determined by the CITY Public Services Area. Foundation-only permits granted pursuant to this paragraph shall prohibit the use of combustible materials (with the exception of concrete forms subject to the approval of the Building Official which shall not unreasonably be withheld), until fire hydrant coverage has been provided for the Project. 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-7) To be included in a future special assessment district established in accordance with applicable law with special assessments be determined and levied by the CITY in accordance with applicable law, for the construction of additional necessary public improvements to Pontiac Trail and St. Regis Way, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Pontiac Trail and St. Regis Way frontage when such improvements are determined by the CITY to be necessary as provided by applicable law.

- (P-8) In the event the Developer conveys Parkland to the City in the manner provided in the Consent Judgment, the Developer shall also grant an easement to the CITY for pedestrian access (as well as access for parks maintenance) from Skydale Drive ("Parkland Easement") to the proposed Parkland as shown on the Site Plan and approved construction drawings, subject to City Council approval, which approval shall not unreasonably be denied. DEVELOPER shall submit legal descriptions, and survey drawings and form of easement to the City Attorney for the Parkland Easement in a form reasonably acceptable to the CITY Attorney within 90 days of providing notice to the CITY that DEVELOPER has purchased the Pontiac Trail 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 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 Improvements in the development prior to final written acceptance of the public Improvements by the CITY. Evidence of such insurance shall be produced prior to any construction of the Improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public Improvements and until notice of acceptance by the CITY of the Improvements.
- (P-11) Existing Woodland, Landmark Trees as such are defined in Sections 5.23.5 and Section 5.23.6 respectively of the Ann Arbor Unified Development Code (Chapter 55, Ann Arbor City Code), and street trees as collectively shown on the Site Plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a period of three years after acceptance of the Improvements by the CITY Public Service Area or granting of Certificate of Occupancy for the final unit whichever is the later. Existing Woodland, Landmark or street trees that are determined by the CITY Public Service Area to be dead, dying or severely damaged due to construction activity within three years after acceptance of the Improvements or granting of Certificate of Occupancy for the final unit whichever is the later, shall be replaced by the DEVELOPER as provided by the Ann Arbor Unified Development Code. Notwithstanding the foregoing, in the event the DEVELOPER conveys the Parkland to the CITY as provided by the Consent Judgment, the DEVELOPER shall have no duties or obligations with regard to the woodland and landmark trees and the Parkland, except as required by the Woodland Restoration Plan as described and shown on the Site Plan.
- (P-12). In the event the DEVELOPER conveys Parkland to the City as provided by the Consent Judgment, the DEVELOPER shall execute a warranty deed in a form reasonably acceptable to the CITY Attorney, and shall deliver the warranty deed to the City Attorney for approval of the City Council. Developer shall submit the form of the warranty deed, legal description, and a survey to the City Attorney within 90 days of providing notice to the CITY that DEVELOPER has purchased the Pontiac Trail Property. The Developer shall provide and install a park identification sign prepared in accordance with CITY specifications within 90 days from the date the DEVELOPER receives written notice from the City that the City Council has elected to accept conveyance of the Parkland from the Developer as provided in the Consent Judgment.

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- (P-13) To deposit a street tree planting escrow account with the CITY's Parks and Recreation in the form of a check payable to the City of Ann Arbor prior to any building permits being issued. The escrow amount shall be reasonable and 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 the Site Plan and CITY standards and specifications. Within one year after the street trees are planted the City Parks and Recreations shall inspect and approve the street trees which approval shall not unreasonably be withheld. If the street trees are found to be acceptable by the CITY the escrow amount will be cancelled and returned to the DEVELOPER. In the event within one year after the street trees are planted any one of the street trees is dead or diseased in a manner that will cause the death of the street tree, or a street tree is not planted in accordance with the Site Plan and CITY standards and specifications then the Developer shall replace or plant the required street tree at which time the escrow amount to the extent the approved street trees on a pro rata basis shall be returned to the Developer with the balance of the escrow fund returned within one year from the time of the successful planting of the replacement or new street trees.
- (P-14) To construct, repair and/or adequately maintain on-site private storm water management system as shown in the Site Plan and approved Plans. 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's Administrator or its designee 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 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-16) 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 community 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 contemplated on the Site Plan prior to the request for and issuance of any certificate of occupancy. Additionally, to contribute \$346,000.00 to the City toward the cost of intersection improvements at Pontiac Trail and Barton Drive prior to the issuance of vertical building permits.
- (P-17) To design, construct, repair, and maintain the Project in accordance with the provisions of Chapter 119 (Noise Control) to reasonably ensure that any noise emanating from use of said development will not violate Chapter 119 In addition, Developer shall review existing noise sources surrounding the development and incorporate necessary design and construction techniques to reasonably ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.
- (P-18) To include the elevation drawings, as submitted to City Council as attached to the Consent Judgment, 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, aesthetics, or materials, that those changes be brought back to

the City Council for consideration. The DEVELOPER shall submit signed and sealed drawings to staff reflecting the substantive elevations, aesthetics, materials and site plan approved by City Council. As used in this Paragraph P-18, "substantive" shall mean any change which materially changes (to the naked eye) the physical appearance of the façade or the exterior of the buildings comprising the Project. Such other changes to the Site Plan shall be governed by the Consent Judgment.

- (P-19) To remove all discarded building materials and rubbish from the development at least once each month during construction, and within one month after completion or abandonment of construction.
- (P-20) In the event the City agrees to the transfer of the Parkland to the City as provided in the Consent Judgment, DEVELOPER agrees to maintain pathways on private property that connect the residential area of the Project to the proposed City Parkland as described in the Consent Judgment on the west side of the site as shown on the Site Plan. Maintenance includes removing weeds, periodically installing wood chips, and removing barriers to the pathways.
- (P-21) 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-22) To provide construction access from Pontiac Trail only and to stage construction equipment and material on the site. No construction access or staging of construction equipment or material is allowed from or on adjoining streets. Utility connections can be made within the Skydale Drive right-of-way as shown on the Site Plan.
- (P-23) To complete the Woodlands Restoration Plan for the 1.95 acre woodland on the west side of the Pontiac Trail Property as described and shown on the Site Plan. The Woodlands Restoration Plan shall commence upon issuance of a grading permit for the Project, and Developer shall be responsible for all of Efforts 1, 2, 3 and 4 as described in the Site Plan for three years. Notwithstanding anything contrary contained in the Site Plan, the prescribed burn required by Effort 3 shall be completed within the first year after issuance of the grading permit.
- (P-24) 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-25) 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 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-26) In addition to any other remedy set forth in this Agreement or in the Consent Judgment or in law or equity, if DEVELOPER fails to make a timely or full payment 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-27) 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 Site Plan.
- (C-2) To use the \$346,000.00 contribution for intersection improvements at the Pontiac Trail/Barton Drive Intersection.
- (C-3) To provide timely and reasonable CITY issuance of permits, certificate of occupancy and inspections as may be required during and after 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) DEVELOPER shall have the right to assign this Agreement and the rights and obligations pursuant to this Agreement and shall provide written notice of such assignment to the CITY by first class mail or by an overnight nationally recognized delivery service to the attention of the City Administrator. Upon DEVELOPER'S (1) payment of \$346,000.00 to the CITY, (2) receipt of a final certificate of occupancy, and (3) receipt of CITY approval (as provided by this Agreement and the Consent Judgment), of the Improvements, wetland mitigation, Woodlands Restoration Plan, street trees to be planted and woodland/landmark tree to be saved, then in the event of assignment of this Agreement and all remaining rights and obligations of this Agreement, DEVELOPER shall be released and discharged from this Agreement.
- (T-4) The obligations and conditions on the DEVELOPER and the CITY, as set forth above in this Agreement and in the Site Plan, shall be binding on any successors and assigns of

the City and upon the successors and assigns of the DEVELOPER as owners 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.

Parcel ID No.: 09-09-16-201-006

- (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 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 provided that in the event of any conflict between this Agreement and the Ann Arbor City Code, the Consent Judgment shall control and bind the City and Developer. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan as provided in the Consent Judgment. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.
- (T-7) In addition to the remedies provided in this Agreement, the event either the Developer or the City claims a breach of this Agreement, the City and/or Developer shall have the right to seek and obtain all remedies and to assert all defenses provided by law and equity including specific performance and injunctive of the terms of this Agreement and the Consent Judgment.

SIGNATURES ON FOLLOWING PAGES

SIGNATURE PAGE TO DEVELOPMENT AGREEMENT

	CITY OF ANN ARBOR, MICHIGAN 301 East Huron Street Ann Arbor, Michigan 48107
	By: Christopher Taylor, Mayor
Approved as to Substance:	By:
Howard S. Lazarus, City Administrator	.
Approved as to Form:	
Stephen K. Postema, City Attorney	_
	TRINITAS DEVELOPMENT LLC 201 Main Street, Suite 1000 Lafayette, Indiana 47901 By: Loren P. King, Authorized Representative
STATE OF MICHIGAN)	
County of Tippecanoe) ss:	
	eledged before me this day of, 2019 by eline Beaudry, City Clerk of the City of Ann Arbor, a Michigan e corporation.
	NOTARY PUBLIC County of Washtenaw, State of Michigan My Commission Expires: Acting in the County of Washtenaw
STATE OF INDIANA)	
) ss: County of Tippecanoe)	
The foregoing instrument was acknow Loren P. King, Authorized Representa company, on behalf of the company.	vledged before me this day of, 2019 by ative of Trinitas Development, LLC, an Indiana limited liability
DRAFTED BY AND AFTER RECORDING Ann Arbor Planning & Development Services ATTN: Brett Lenart Post Office Box 8647 Ann Arbor, Michigan 48107 (734) 794-6265	NOTARY PUBLIC County of Washtenaw, State of Michigan My Commission Expires: Acting the County of Washtenaw

EXHIBIT D PARKLAND DESCRIPTION

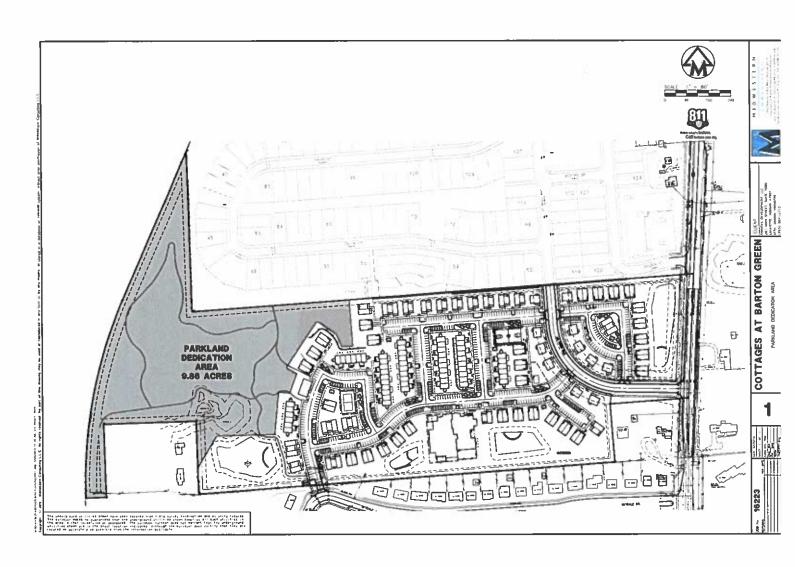


EXHIBIT E GREEN ITEMS

GRAPIDS 72664-1 564953v2



Green Initiative Overview: Cottages at Barton Green

Ann Arbor, MI

<u>Purpose</u>

To identify ways the Cottages at Barton Green can use sustainable building or site elements to enhance the project design and promote the local environmentally friendly initiatives.

Clubhouse Building Design Standards

Clubhouse building will comply with ASHRAE 90.1-2007

Building Envelope:

- o Window = 0.40 U-Factor nonmetal, 0.50 U-Factor metal, 0.40 SHGC
- o Roof Insulation Value = R20
- o Wall Insulation Value = R13 wood framed wall

0

o Foundation Wall R Value = Not required

Residential Building Design Standards

Duplex, Singles, Quads, and Townhomes buildings will comply with State Residential Code

Building Envelope:

- o Window = 0.35 U-Factor
- o Roof/Attic Insulation Value = R38 continuous
- o Wall Insulation Value = R13 framed walls

n

- o Foundation Wall Value = R10 continuous
- Building envelope must be caulked and sealed.
- Supply ducts in attics must be insulated to R8, return ducts in unconditioned spaces must be insulated to R6
- All ducts must be sealed and installed entirely within the building thermal envelope
- 50% of the lighting "lamps" must be high efficiency. Compact fluorescents qualify.

Sample Green Initiatives to be Implemented

- Provide long-term bicycle storage for more than 30% of the units. This would include either covered bicycle parking or bicycle lockers.
- Conserve existing natural areas and restore damaged areas to provide habitat and promote biodiversity. This includes 9.86 acres of high-quality woodland and a 3-year restoration plan.
- Utilize native adaptive vegetation throughout the site.
- Provide greater than 65% open outdoor space.
- Install Energy Star or performance equivalent appliances.
- Install low-flow plumbing fixtures throughout the clubhouse.
- Eliminate irrigation and utilize natural features / rainwater for landscaping.



- Reduce the environmental and economic harms of excessive energy use by achieving a minimum level of energy efficiency for the clubhouse building and its systems. This would include energy modeling reflecting a 5% improvement in energy performance and air-flow testing.
- Provide dedicated areas accessible to waste haulers and building occupants for the collection and storage of recyclable materials for the clubhouse building and throughout the site.
- · Purchase regional building materials (by cost) as available.
- Incorporating porous material for a portion of the site hardscape.
- Prohibit smoking within the clubhouse and surrounding area.
- Each ventilation system in the clubhouse that supplies outdoor air to occupied spaces will have
 particle filters or air cleaning devices that have a minimum efficiency reporting value (MERV) of
 13 or higher, in accordance with ASHRAE Standard 52.2–2007. All air filtration media will be
 replaced after completion of construction and before occupancy.
- Utilize low volatile organic compounds during construction including paint, adhesives, sealants, flooring, composite wood, and insulation throughout the clubhouse.
- Design clubhouse heating, ventilating, and air-conditioning (HVAC) systems and the building envelope to meet some requirements of ASHRAE Standard 55–2010, Thermal Comfort Conditions for Human Occupancy specifically related to thermostats and controllability in all regularly occupied spaces
- Provide lighting controls and occupancy sensors within the clubhouse to reduce energy consumption.
- Achieve direct line of sight to outdoors via vision glazing within the Clubhouse common areas.
- Utilize natural light within the clubhouse and reduce interior light pollution.
- Connectivity to public transportation and use of private mass transit to reduce vehicle emissions.