

LATE SUBMITTAL

ITEM E-01 CONDITIONAL REZONING (CR JPLN2019-001) - PROPOSED MNK TROY 1, LLC CONDITIONAL REZONING, PARCEL 88-20-14-152-001 AND 88-20-14-301-031, FROM R-1C, RT AND EP DISTRICTS TO RT DISTRICT

Scope: Non-substantive revisions to Conditional Rezoning Agreement

CONDITIONAL REZONING AGREEMENT

THIS CONDITIONAL REZONING AGREEMENT ("Agreement") is hereby entered by and between MNK Troy 1 LLC, 1052 Oaktree Lane, Bloomfield Hills, Michigan, 48304, ("Developer"), and the CITY OF TROY, MICHIGAN, a Michigan Municipal Corporation ("City"), on 500 W Big Beaver, Troy Michigan, 48084.

RECITALS

A. The Developer is currently the fee owner of real property located at 4516 and 4396 Rochester Road, Troy, Michigan, more specifically described on Exhibit A attached hereto ("Development Parcels").

B. The Developer intends to improve and develop the Development Parcels as an attached single family townhome community, and to facilitate this development, the Developer desires to have the Development Parcels re-zoned from RT, R1-C and EP to RT under the Troy Zoning Ordinance.

C. The Developer has voluntarily offered to enter into this Conditional Rezoning Agreement consistent with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

E. This Conditional Rezoning Agreement is made by the City pursuant to authority granted to the City under MCLA §125.3405, as amended.

F. The City, by action of its City Council at its meeting of _____, has accepted the offer of the Developer to enter into this Conditional Rezoning Agreement.

NOW, THEREFORE, MNK Troy 1 LLC and the City for the good and valuable consideration outlined in this Agreement, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

ARTICLE 1

DEFINITIONS AND COVENANTS

1.1 "Commencement Date" means the date of _____, 2021, which is ten (10) days after the acceptance of the conditional rezoning offer by the City.

1.2 "Conditional Rezoning Agreement" shall mean Chapter 39, Section 16.04 of the City's Zoning Ordinance, as amended, this Agreement, including the offered conditions, see Article 3.

1.2 "Improvements" means (a) acquisition of building permits; or (b) submission of required site bonds to the City; or (c) on-site improvements such as site grading, in-ground utility changes, and building staking.

1.3 "Troy Zoning Ordinance" means Chapter 39 of the Code of Ordinances of the City of Troy.

1.4 "Zoning Enabling Act" means State of Michigan's Act 110 of the Public Acts of 2006, as amended (MCLA §125.3101, et. seq., as amended).

ARTICLE 2

DESCRIPTION OF DEVELOPMENT

2.1 **Development Description.** The development involves the construction of an attached single family townhome community consisting of no more than 32 units in eight buildings on the Development Parcels as shown in the concept only sketch in Exhibit B attached hereto.

2.2 **Development Parcel.** The Property is described on Exhibit A, attached hereto and also constitutes the entire property covered by this Agreement.

2.3 **Current Ownership of Property.** The Property is currently owned by MNK Troy 1 LLC.

2.4 **Concept Plan.** No drawings or other submittals for the Property have been approved by the City. Developer has submitted a concept plan, Exhibit B, which is non-binding on either party.

ARTICLE 3

CONDITIONS FOR REZONING

3.1 Voluntary Conditions. Under § 405 of the Michigan Zoning Enabling Act, Developer voluntarily offers and agrees to be bound by the following uses and restrictions as a condition to rezoning approval:

- a. MNK Troy 1 LLC intends to develop and improve the Property in accordance with the concept plan that was submitted and recommended for approval by the Troy Planning Commission resolution adopted at its January 28, 2020 meeting, and as adopted by the City Council on _____, 2021. However, the parties understand that the concept plan as submitted is not binding on either party. MNK Troy 1 LLC intends to submit site plans in accordance with the City's Zoning Ordinance which will then be reviewed by City Administration and Planning Commission in the usual course.
- b. The Development shall meet all requirements for the RT Zoning District under Section 4.07 of the Troy Zoning Ordinance.
- c. An Open Space Preservation Easement shall be submitted to the Troy City Council for acceptance and approval prior to final site plan approval. The easement shall cover the eastern portion of the Zoning Parcels and will be equal to the area currently zoned EP (0.93 acres). This area will provide approximately a 24% open space buffer from adjacent neighboring parcels to the east of the Zoning Parcels as depicted in the attached concept only sketch. (Exhibit B).
- d. The detention basin shall be designed to store water for a limited time after a storm event and shall otherwise remain dry per engineering design.
- e. Building materials shall consist of durable low maintenance or maintenance free materials, examples include but are not limited to brick, asphalt shingles, and plank siding. A variety of color palates will also be offered during the site plan review process which will be reviewed by the Troy Planning Commission.
- f. Each unit shall include a 2-car garage.
- g. A minimum of 9-guest parking spaces shall be provided.
- h. In addition to the required open space buffer between this project and the abutting properties zoned R-1C, additional screening shall

be provided along 250-feet of the southern property line as per Exhibit B.

- i. No exterior refuse containers shall be proposed. Individual waste and recycling containers shall be stored in each unit's garage and placed at the curb on collection days.
- j. The Development shall include a maximum of 8 buildings and 32 individual units.
- k. For the purpose of eliminating potential headlight glare affecting the homes on the north side of the property, specifically those homes located at 1016, 1030, and 1044 Shallowdale, a building will be placed at the terminus of the northernmost driveway to shield the homes from headlight glare as depicted on Exhibit B or a similar configuration. This building shall meet the following requirements:
 - 1. The building setback shall be a minimum of 35 feet from the north boundary line of the parcel;
 - 2. The front entrance of all building units shall face North; and
 - 3. The garage entrance of all building units shall face south.
- l. To enhance screening of the Open Space Preservation Easement, 3 rows of coniferous screening trees shall be provided on the east side of the detention pond and 2-rows of coniferous screening trees shall be provided on the north side of the detention pond.

3.2 **Representation.** MNK Troy 1 LLC represents and confirms that the Property shall not be used or developed in a manner inconsistent with the conditions set forth in this Agreement.

3.3 **Expiration.** MNK Troy 1 LLC shall be subject to the expiration of the provisions of Section 16.04.E. of the Troy Zoning Ordinance and Section 6.2 of this Agreement.

ARTICLE 4

REZONING

4.1 **Resolution and Zoning Map Amendment.** Directly after City Council's approval of this Agreement, City Council shall pass a Resolution rezoning the Development Parcels from RT, R1-C, and EP zoning to RT zoning. That Resolution shall also state that the Zoning Map shall be amended to reflect a new zoning classification. The Planning Director shall take necessary action to amend the Zoning Map to the new classification along with a relevant designation that will provide reasonable notice of the Agreement. The Conditional Rezoning Approval and the amendment to the Zoning Map shall not become effective until the Agreement is recorded with the Oakland County Register of Deeds and a certified copy of the Agreement is filed with the City Clerk.

ARTICLE 5

DEVELOPER'S RIGHTS, OBLIGATIONS AND PROPERTY RESTRICTIONS

5.1 **Right to Develop.** MNK Troy 1 LLC shall have the right to develop the Property in accordance with the Conditional Rezoning Agreement once the City has approved the site plan. Final Site Plan Approval shall be in accordance with the City's Zoning Ordinance and this Agreement. If development and/or actions are undertaken on or with respect to the Property in violation of this Agreement, such development and/or actions shall constitute a violation of the City of Troy Code of Ordinances and deemed a nuisance per se. In such cases, the City may issue a stop work order relative to the Property and seek any other lawful remedies. Until curative action is taken to bring the Property into compliance with the Conditional Rezoning Agreement, the City may withhold or, following notice and an opportunity to be heard, revoke permits and certificates in addition to or in lieu of such other lawful action to achieve compliance.

5.2 **Compliance with Agreement.** All development, use, and improvement of the Property shall be subject to and in accordance with this Conditional Rezoning Agreement, all applicable City Ordinances, and shall also be subject to and in accordance with all other approvals and permits required under applicable City Ordinances and State law.

5.3 **Compliance with City Ordinances.** MNK Troy 1 LLC shall comply with the City Code of Ordinances, make any necessary application for permits and obtain any necessary permits for the development of the Property, including signage.

ARTICLE 6

THE CITY'S RIGHTS AND OBLIGATIONS

6.1 **Police Powers.** The action of the City in entering into this Conditional Rezoning Agreement is based upon the understanding that the intent and spirit of the police power objectives of the City relative to the Property are embodied in the Conditional Rezoning Agreement Documents and those powers are assured based upon the development and/or undertakings on the Property. The City is thus achieving its police power objective and has not, by this Agreement, bargained away or otherwise compromised any of its police power objectives.

6.2 **Expiration.** Conditional Rezoning approval shall expire following a period of two (2) years from the effective date of the rezoning as set out above unless progress has been diligently pursued and substantial completion has occurred in accordance with permits issued by the City. The City shall have the sole discretion to determine if progress has been diligently pursued by MNK Troy 1 LLC. The City, through its employees and agents, shall at all times be allowed to enter onto the Property to determine the progress of the development.

6.3 **Enforcement.** The City may initiate legal action for the enforcement of any of the provisions, requirements, and obligations set forth in this Agreement.

6.4 **Non-Compliance.** If MNK Troy 1 LLC is not developing the Property in compliance with this Agreement, the City may issue a stop work order as to any or all aspects of the Development, may deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Development regardless of whether the Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Development.

ARTICLE 7

GENERAL PROVISIONS

7.1 **The City's Representations and Warranties.** The City represents and warrants to MNK Troy 1 LLC as follows:

- a. **Authority.** The City has the authority to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof. The City's authority shall be evidenced by appropriate resolutions.
- b. **Transfer of Ownership.** The transfer of title of the Property from MNK Troy 1 LLC to an entity in which the principals of MNK Troy 1 LLC do have an ownership interest, if such transfer is made prior to substantial completion of the Improvements, shall not constitute an event of default under this Conditional Rezoning Agreement;

- c. **Compliance.** The Conditional Rezoning Agreement complies with the requirements of City Ordinances, including the Troy Zoning Code.
- d. **Sole Authority.** The City Council is the sole and appropriate municipal body to enter into the Conditional Rezoning Agreement with MNK Troy 1 LLC.
- e. **Plan Review.** The City will timely review the plans and documents submitted for building permits, public utilities and signage, and any amendments thereto submitted by MNK Troy 1 LLC to achieve the purposes of this Conditional Rezoning Agreement.
- f. **Use.** The intended land use for the Property is a permissible use under the Troy Zoning Code and Troy Master Plan.
- g. **Validity of Use.** In the event that the Troy Zoning Code is amended such that the use provided for in this Agreement for the Property are no longer permitted uses of right, the use provided for in this Agreement and continuation of those uses shall be governed by the provisions of Troy's Zoning Ordinance governing non-conforming lots, uses and structures currently set forth in Article 14 of the Zoning Ordinances.
- h. **Restraints.** Neither the execution nor delivery of this Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the City's Charter, or any agreement to which the City is a party or by which it is bound.
- i. **Disclosure.** No representation or warranty by the City, or any statement or certificate furnished to MNK Troy 1 LLC pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.
- j. **Litigation.** The City has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the City or its principals from carrying out the covenants and promises made herein.

7.2 **MNK Troy 1 LLC's Representations and Warranties.** MNK Troy 1 LLC represents and warrants to the City as follows:

- a. **Organization.** MNK Troy 1 LLC has all requisite power and authority to own and operate its assets and properties, to carry on business as now being conducted, and to enter into and perform the terms of the Conditional Rezoning Agreement.
- b. **Authorization.** The execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly authorized by MNK Troy 1 LLC.
- c. **Restraints.** Neither the execution nor delivery of this Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, MNK Troy 1 LLC's organizational documents, or any agreement to which MNK Troy 1 LLC is a party or by which it is bound.
- d. **Disclosure.** No representation or warranty by MNK Troy 1 LLC, or any statement or certificate furnished to the City pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.
- e. **Litigation.** MNK Troy 1 LLC has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect MNK Troy 1 LLC or its principals from carrying out the covenants and promises made herein.
- f. **Financial.** MNK Troy 1 LLC is financially able to develop the Property.
- g. **Compliance with Laws.** MNK Troy 1 LLC shall comply with all Laws and all City ordinances applicable to the construction, ownership, maintenance, operation and use of the Property.

7.3 **Effective Date.** The effective date of this Conditional Agreement is ten (10) days after the date the Troy City approves the rezoning, or on the date the Agreement is recorded with the Oakland County Register of Deeds, whichever date is later.

ARTICLE 8

NOTICES

All notices, consents, approvals, requests and other communications, herein collectively called "Notices," required or permitted under this Conditional Rezoning Agreement shall be given in writing, signed by an authorized representative of the City, and MNK Troy LLC 1 and mailed by certified or registered mail, return receipt requested, personally delivered, sent by overnight courier or sent by e-mail to a party as follows:

To City: Planning Director
 City of Troy
 500 W. Big Beaver Road
 Troy, Michigan 48084
 Tel: (248) 524-3364
 Email: SavidantB@troymi.gov

With a Copy to: City Attorney
 City of Troy
 500 W. Big Beaver Road
 Troy, Michigan 48084
 Tel: (248) 524-3320
 Email: bluhmlg@troymi.gov

To MNK Troy 1 LLC: MNK Troy 1, LLC
 1052 Oaktree Lane
 Bloomfield Hills, Michigan 48304
 Telephone: (248) 895-5564
 Email: Arti@premiumdevgroup.com

All such notices, certificates or other communications shall be deemed served upon the date of personal delivery, the day after delivery to a recognized overnight courier, the date of the transmission by facsimile or other electronic means is verified or two days after mailing by registered or certified mail. Any party may by notice given under this Conditional Zoning Agreement designate any further or different addresses or recipients to which subsequent notices, certificates or communications hereunder shall be sent.

ARTICLE 9

MISCELLANEOUS

9.1 **Non-Liability of City, Officials and Employees.** No City official, officer, employee, board member, city council member, elected or appointed official, attorneys, consultants, advisors, agents and representatives, shall be personally liable to MNK Troy

1 LLC for any default or breach by the City of any obligation under this Conditional Rezoning Agreement or in any manner arising out of the performance of this Conditional Rezoning Agreement by any party.

9.2 **Successors/Provisions Running With the Land.** This Conditional Rezoning Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of Sections 3.1 and 5.1 of this Conditional Rezoning Agreement shall be deemed benefits and burdens which shall run with the Property.

9.3 **Recording.** This Conditional Rezoning Agreement shall be recorded with the Oakland County Register of Deeds at the expense of MNK Troy 1 LLC. MNK Troy 1 LLC shall provide the Troy City Clerk with a certified copy of the Agreement as recorded, showing the date of recording, liber and page numbers.

9.4 **Complete Agreement.** This Conditional Rezoning Agreement constitutes the entire agreement between the parties with respect to the subject of this Conditional Rezoning Agreement and it may not be amended or its terms varied except in writing and signed by the required parties.

9.5 **Conflicts.** In the event of conflict between the provisions of this Conditional Rezoning Agreement and the provision of the Troy Zoning Code, the provisions of this Agreement shall prevail in the following order: (i) this Agreement, (ii) the final site plan, (iii) Chapter 39, Section 16.04 of the City's Zoning Ordinance.

9.6 **Default Remedies of MNK Troy 1 LLC.** The City shall not be in default in any term or condition of this Agreement unless and until MNK Troy 1 LLC has provided the City with written notice that the City has failed to comply with an obligation under this Agreement, and the City has failed to cure such failure within thirty (30) days of the written notice, unless the nature of the noncompliance is such that it cannot be cured with due diligence within such period, in which case the City has failed to commence the cure within such period and thereafter diligently pursued the cure. In the event of a default, MNK Troy 1 LLC's sole remedy at law or in equity shall be the right to seek specific performance as to the issuance of approvals, consents, or the issuance of building permits required by the City pursuant to this Agreement.

9.7 **Default Remedies of City.** MNK Troy 1 LLC shall not be in default in any term or condition of this Agreement unless and until the City has provided MNK Troy 1 LLC with written notice that MNK Troy 1 LLC has failed to comply with an obligation under this Agreement, and MNK Troy 1 LLC has failed to cure such failure within thirty (30) days of the written notice, unless the nature of the noncompliance is such that it cannot be cured with due diligence within such period, in which case MNK Troy 1 LLC has failed to commence the cure within such period and thereafter diligently pursued the cure. In the event of a default, the City's sole remedy at law or in equity shall be the right to seek specific performance of the obligations of MNK Troy 1 LLC pursuant to this Agreement.

9.8 **Third-Party Beneficiaries.** No term or provision of this Conditional Rezoning Agreement is intended to be, or shall be, for the benefit of any person not a party to the Agreement, and no such person shall have any right or cause of action hereunder.

9.9 **Severability.** The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses, or provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law.

9.10 **Waiver of Breach.** A party to this Agreement does not waive any default, condition, promise, obligation, or requirement applicable to any other party hereunder, unless such waiver is in writing, signed by an authorized representative of that party, and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation, or requirement in any past or future instance. No failure of a party to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to the exercise of any right or remedy in the event of a default shall constitute a waiver of any such default in such covenant, agreement, term, or condition.

9.11 **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan. MNK Troy 1 LLC agrees, consents and submits to the personal jurisdiction of any competent court of jurisdiction in Oakland County, Michigan, for any action brought against it arising out of this Agreement. MNK Troy 1 LLC also agrees that it will not commence any action against the City because of any matter whatsoever arising out of, or relating to, the validity, construction, interpretation and enforcement of this Agreement in any courts other than those within Oakland County, Michigan. Nothing hereunder shall be construed to limit or prohibit MNK Troy 1 LLC to petition or submit land use or zoning requests to the City after the Effective Date.

9.12 **Reasonableness.** After consulting with their respective attorneys, Developer and City confirm that this Agreement is authorized by and consistent with all applicable state and federal law and the United States and Michigan Constitutions, that the terms of this Agreement are reasonable, that they shall be estopped from taking a contrary position in the future, and that each shall be entitled to injunctive relief to prohibit any actions by the other inconsistent with the terms of this Agreement. Developer and the City fully accept and agree to the final terms, conditions, requirements and obligations of the Agreement and shall not be permitted in the future to claim that the effect of the Agreement results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of any of the Agreement causes an inverse condemnation or taking of all or a portion of the Property. Furthermore, it is agreed that the improvements and undertakings set forth in the Agreement are roughly proportional to the burden being created by the development, and to the benefit which will accrue to the Property as a result of the requirements represented by the development.

9.14 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

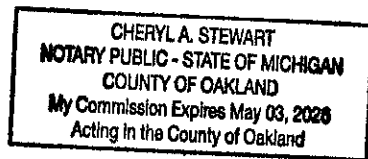
MNK Troy 1, LLC

Cheryl A Stewart
Witness

By: Arti Mangla
Its: Managing Member

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

The foregoing Conditional Rezoning Agreement was acknowledged before me this 14 day of June, 2021, by Arti Mangla as Managing Member of MNK Troy 1, LLC.



Cheryl A Stewart
Cheryl A. Stewart, Notary Public
Oakland County,
Acting in Oakland County
My Commission Expires: May 3, 2026

Signatures continued on next Page

CITY OF TROY, MICHIGAN,
a Michigan municipality

Witness

By: _____
Ethan Baker
Its: Mayor

Witness

By: _____
M. Aileen Dickson
Its: Clerk

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

The foregoing Conditional Rezoning Agreement was acknowledged before me this _____ day of _____, 2021, by Ethan Baker on behalf of the City of Troy, a Michigan municipality.

_____, Notary Public
_____, County, Michigan
Acting in Oakland County
My Commission Expires: _____

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

The foregoing Conditional Rezoning Agreement was acknowledged before me this _____ day of _____, 2021, by M. Aileen Dickson on behalf of the City of Troy, a Michigan municipality.

_____, Notary Public
_____, County, Michigan
Acting in Oakland County
My Commission Expires: _____

Prepared by and when recorded return to:

MNK Troy 1, LLC
c/o Arti Mangla
1052 Oaktree Lane
Bloomfield Hills, Michigan 48304

EXHIBIT 'A'

PROPERTY DESCRIPTION

Record Property Descriptions:

#20-14-301-031

T2N, R11E, SEC 14 SQUARE ACRES SUB N O 1 W 500 FT OF LOT 37 ALSO W 500 FT OF THAT PART OF LOT 38 DESC AS BEG AT NW LOT COR, TH S 89-53-15 E 1058.79 FT, TH S 00-36-30 E 128.35 FT, TH N 82-59-15 W 1068.14 FT TO BEG EXC W 15 FT OF ABOVE DESC PARCEL TAKEN FOR ROCHESTER

#20-14-152-001

T2N, R11E, SEC 14 PART OF NW 1/4 BEG AT W 1/4 COR, TH N 00-36-30 W 219.59 FT, TH S 89-47-15 E 325 FT, TH S 00-16-30 E 219.59 FT, TH N 89-47-15 W 325 FT TO BEG EXC W 75 FT TAKEN FOR RD 1.26 A

As Surveyed Total Property Description:

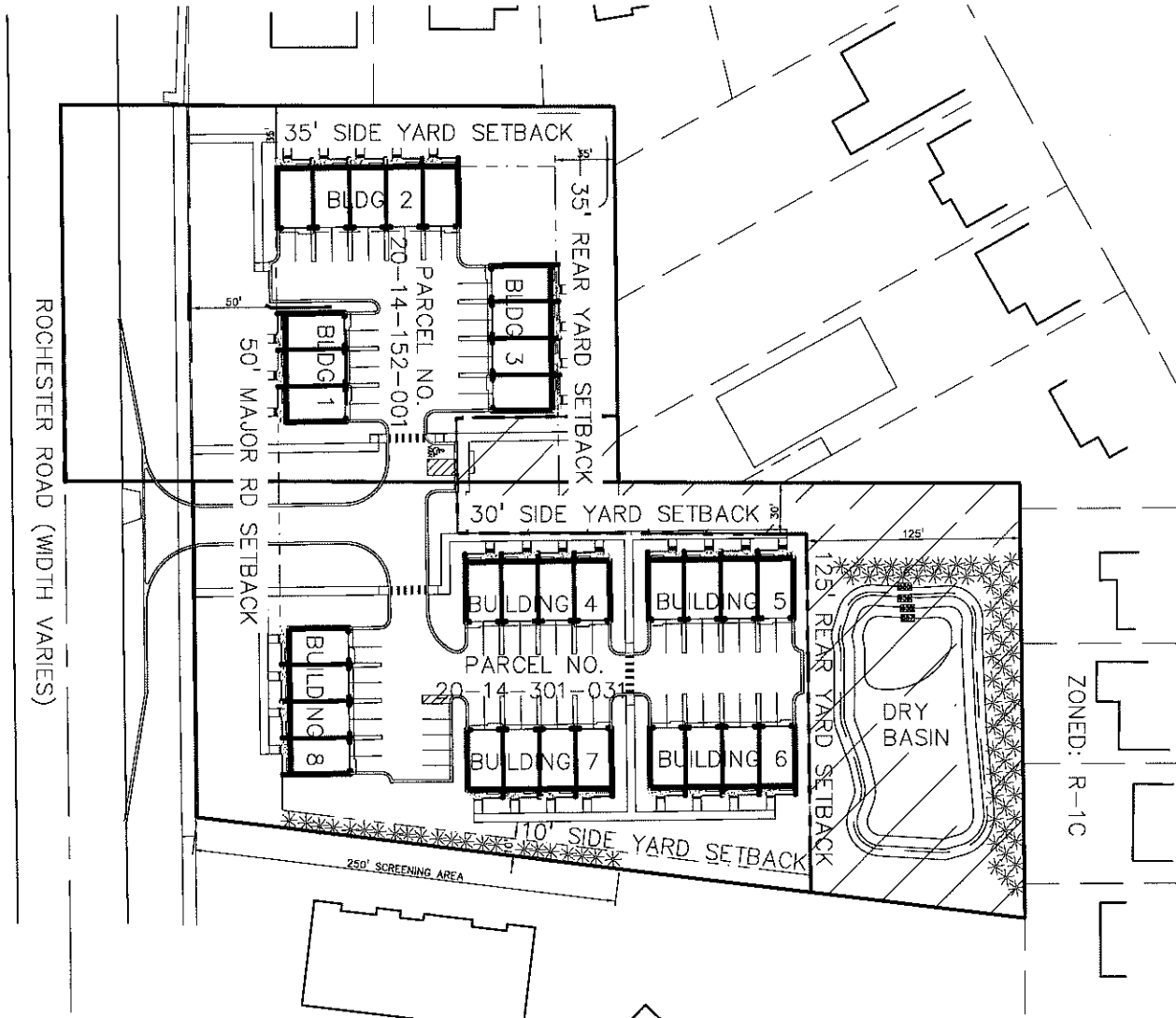
A parcel of land in the West 1/2 of Section 14, T.2N., R.11E., City of Troy, Michigan together with part of Lots 37 and 38, "Square Acres Sub. No.1," as recorded in Liber 44, Page 48 of Oakland County Records described as: Beginning at the West 1/4 corner of Section 14; thence N.00°37'21"W., 219.59 feet along the west line of Section 14 and the centerline of Rochester Road to the SE corner of "Shallowbrook Sub.," as recorded in Liber 144, Page 20 of Oakland County Records; thence along said "Shallowbrook Sub." the following three courses; S.89°47'15"E., 325.00 feet; S.00°37'21"E., 219.59 feet; S.89°47'15"E., 235.00 feet along the east/west 1/4 line of Section 14; thence S.00°37'57"E., 254.28 feet; thence N.82°58'45"W., 489.31 feet to a point on the 75.0 foot right of way of Rochester Road; thence along said line N.00°37'47"W., 196.26 feet to a point on the east/west 1/4 line of Section 14; thence along said line N.89°47'15"W., 75.01 feet to the Point of Beginning and containing 4.146 acres.

PROPERTY ADDRESS:

20-14-301-031 – 4396 ROCHESTER RD.

20-14-152-001 – 4516 ROCHESTER RD.

EXHIBIT B



JUNE 7, 2021