

TRAIL AGREEMENT

Timberfield Apartments of Northfield Phase Two, LLLP, a Minnesota limited liability limited partnership (the “**Developer**”) and the City of Northfield (the “**City**”) enter into this Trail Agreement (this “**Agreement**”) effective as of September 9, 2021 (the “**Effective Date**”).

In consideration of the promises and the mutual obligations herein, the parties covenant and agree with each other as follows:

1. The City agrees to execute and deliver a partial release (the “**Partial Release**”) of the Locust Development Agreement, dated February 19, 2002, and recorded March 20, 2002 as Document No. 030033 (the “**Development Agreement**”), with respect to Outlot F, Locust Development, City of Northfield, Rice County, Minnesota, which is being replatted as Lot 1, Block 1, Timberfield Apartments First Addition, Rice County, Minnesota (the “**Development Property**”); provided, however, that the executed Partial Release will be delivered to and held in escrow by First American Title Insurance Company d/b/a Tri-County Abstract and Title Guaranty (the “**Title Company**”) until such time as the Title Company indicates in writing (email being acceptable) on the Developer’s closing of its purchase of the Development Property that the Title Company is paying in full to the City, on the Developer’s behalf, the park dedication fees in the amount of \$6,688.29 attributable to the Development Property as required in the Development Agreement. The Partial Release form is attached hereto and incorporated herein by reference as **Exhibit A**.

2. The Developer, as part of its development of a multi-family residential project known as Timberfield Apartments on the Development Property (the “**Project**”), agrees to construct a public trail (the “**Trail**”), at its cost and expense, adjacent to the Development Property upon that certain identified City owned property described as Outlot D, Locust Development, City of Northfield, Rice County, Minnesota (the “**City Property**”), by no later than July 15, 2022, all in accordance with and as shown on those certain City Engineer approved plans and specifications for the Project dated August 13, 2021 prepared by Campion Engineering Services, Inc. (the “**Trail Plans**”), which Trail Plans are incorporated herein by reference.

3. The City agrees that it will not require security in the form of cash escrow, letter of credit or other security for the completion of the Trail in accordance with the approved Trail Plans. Instead, the Developer and City agree that the City will not issue a certificate of occupancy for the Project until the Trail project is completed in compliance with the Trail Plans and the Trail is accepted in writing by the City Engineer as being in satisfactory compliance with the Trail Plans, such acceptance not to be unreasonably withheld, conditioned or delayed.

4. The Developer and its licensed and insured contractors, may enter upon the City Property to perform all work to construct and complete the Trail in accordance with the Trail Plans following written notice to commence provided by the City Engineer. The permission granted herein shall expire upon the written acceptance by the City Engineer of the constructed Trail.

5. The Developer and its contractors and agents shall comply with all applicable law and City Code requirements pertaining to construction of the Trail on the City Property.

6. Following written acceptance of the Trail by the City Engineer, the Developer and City agree that the Trail shall become City property without further notice or action and without compensation from the City to the Developer for the same, effective upon the date of written acceptance of the Trail by the City Engineer.

7. The Developer shall replace or repair any damage or destruction to any property or improvements located on the City Property or City streets, boulevards and rights-of-way, or adjacent private property not owned by Developer, caused by Developer, or its contractors and subcontractors, during the construction of the Trail.

8. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the Trail.

9. The Developer shall be solely responsible for all costs of constructing the Trail, including, but not limited to, Developer's actual construction, engineering, administration and legal costs related thereto.

10. The Developer agrees to warrant the Trail against poor material and faulty workmanship for one (1) year following the date of final acceptance of the Trail by the City Engineer.

11. The Developer agrees to timely pay all applicable fees related to the Project, including, but not limited to, applicable SAC and WAC charges.

12. The Developer shall have and maintain until six (6) months after the Trail is completed and the City Engineer has accepted the Trail, liability and property damage insurance covering bodily injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the Trail.

13. The Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors (the "**City Indemnified Persons**") harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of the construction of the Trail (except for the negligence or intentional misconduct of the City or the City Indemnified Persons with respect to the construction of the Trail), the development of the Development Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.

14. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City Property. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City Property, the Developer shall take all steps necessary to see that it is removed within sixty (60) business days of its being filed; provided, however, that the Developer may contest any such lien, provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

15. The Developer shall ensure that it and its contractor maintain a clean and orderly work site.

16. This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement.

17. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Facsimile and emailed pdf signatures shall be sufficient for all purposes.

The parties have executed this Agreement as of the Effective Date.

Timberfield Apartments of Northfield Phase Two, LLLP

By: Timberfield Apartments of Northfield, LLC,
Its General Partner

By _____
Steven D. Kuepers, Chief Manager

City of Northfield

By _____
Its _____

By _____
Its _____

EXHIBIT A

**PARTIAL RELEASE OF
DEVELOPMENT AGREEMENT**

September 9, 2021

The property legally described as:

Outlot F, Locust Development, City of Northfield, Rice County, Minnesota,

is hereby released from the terms and conditions of the Development Agreement dated February 19, 2002 and recorded March 20, 2002 as Document No. 030033 (in the Rice County Registrar's Office) by and between the City of Northfield, a Minnesota municipal corporation, and Jonathan P. and Laura C. Jasnoch, husband and wife and Locust Limited Partnership.

CITY OF NORTHFIELD

by: _____
Its: Public Works Director/City Engineer

by: _____
Its: City Clerk

STATE OF MINNESOTA)
)
COUNTY OF RICE)

This instrument was acknowledged before me on this ____ day of September, 2021, by _____ as Public Works Director/City Engineer and _____ as City Clerk, of the City of Northfield.

Notary Public

Drafted by:
David W. Jacobsen, #0390393
Jacobsen Law Firm, PA
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Northfield, MN 55057
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