

**1320 South University Avenue**

**Conditional Rezoning Statement of Conditions**

This Conditional Rezoning Statement of Conditions (“Statement of Conditions”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Ann Arbor, a Michigan municipal corporation, with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107, and 1320 South University, LLC, a Michigan Limited Liability Company (“Developer”), whose address is 610 Church Street, Ann Arbor, Michigan 48104.

**Recitals**

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, that certain conditions could be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On September 1, 2011, Developer applied for rezoning of the property located at 1320 South University Avenue, containing 0.82 acres, on the south side of South University Avenue between South Forest and Washtenaw Avenues, as more fully described on the attached **Exhibit A** (the “Property”).
- D. On February 7, 2012, the Planning Commission, after public hearing, recommended denial of zoning of the Property to D1 (Downtown Core) base zoning district and South University Character overlay zoning district. The Developer also submitted an Area Plan showing a potential proposed use and site design of the property.

- E. Subsequently, Developer voluntarily offered in writing restrictions on certain use of the land as a condition to the zoning of the Property.
- F. On \_\_\_\_\_, 2012, City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, City has decided to accept the developer's offer for conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional rezoning for this Property.

NOW, THEREFORE, Developer and City agree:

- 1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
- 2. Area Plan. The conditional rezoning was granted by the City based, in part, by the Developer's stated proposed uses for the Property as a mixed use development, as shown in the proposed Area Plan attached as Exhibit B.
- 3. List of Conditions. The conditional rezoning was granted to Developer based on conditions which were voluntarily offered by Developer. The conditions which form the basis of the City's grant of the conditional rezoning are as follows:
  - i. The permitted uses shall be limited to those permitted in the D2 Downtown Interface Base zoning district, but excluding all manufacturing and transportation-related uses, subject to all the regulations set forth therein.
  - ii. The maximum usable floor area in percentage of lot area shall be limited to 400 percent normal (without premiums), or 700 percent with premiums as set forth in the Zoning Ordinance for the D1 Downtown Core Base zoning district.
  - iii. The maximum building height shall be limited to 145 feet.

- iii. The minimum east (side) required open space, as defined in the Zoning Ordinance, shall be as shown on Exhibit B, the Area Plan, and generally vary between 15 and 68 feet.
  - iv. The minimum distance the exterior face of rear (southern) or side (eastern or western) walls of the building to any R4C zoning district boundary shall be 38 feet as shown on Exhibit B, the Area Plan.
  - v. The minimum open space shall be 12 percent (4,287 square feet).
  - vi. The maximum building coverage shall be 80 percent.
  - vii. The standards and regulations for minimum height, minimum gross lot size, streetwall height, offset at top of streetwall, massing articulation, and primary street building frontage in the D1 Downtown Core Base zoning district, the South University D1 Character Overlay district, and primary frontage shall remain as set forth in the Zoning Ordinance . All other applicable standards and regulations shall also remain as set forth in the City Code.
4. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional rezoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the only party having an interest in the Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other

characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional rezoning.

7. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional rezoning that may require a special exception use permit, a variance, or site plan approval under the terms of the Ann Arbor City Code, may only be commenced if such special exception use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of the Ann Arbor City Code.
8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
9. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
10. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer to request a rezoning of the Property at any time, or to continue an existing nonconforming use as allowed by law if the Property is rezoned by the City.

IN WITNESS WHEREOF, the parties have caused this Conditional Rezoning Statement of Conditions to be executed on the day and year recited above.

WITNESSES:

CITY OF ANN ARBOR  
a Michigan municipal corporation

\_\_\_\_\_  
Print Name:

By:\_\_\_\_\_  
John Hieftje, Mayor

\_\_\_\_\_  
Print Name:

By:\_\_\_\_\_  
Jacqueline Beaudry, City Clerk

WITNESSES:

DEVELOPER

\_\_\_\_\_  
Print Name:

By:\_\_\_\_\_  
Philip Sotiroff, Manager  
1320 South University, LLC

**ACKNOWLEDGMENT**

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me John Hieftje and Jacqueline Beaudry, the Mayor and City Clerk respectfully of the City of Ann Arbor on the \_\_\_\_\_ day of 2012.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW    )

The foregoing Agreement was acknowledged before me by Philip Sotiroff, of 1320 South University, LLC, on the \_\_\_\_\_ day of 2012.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

## **Exhibit A**

### Legal description:

Beginning at the northwest corner of Lot 75, Ransom S. Smith's Second Addition to the City of Ann Arbor, Washtenaw County, Michigan, as recorded in Liber 42 of Deeds, page 446, Washtenaw County Records; thence S00°24'01"W 264.64 feet along the west line of said Lot 75 and the west line of fractional Lot 9 of R.S. Smith's Second Addition to the City of Ann Arbor, Washtenaw County, Michigan, according to the Plat thereof as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records and the extension of said west lines to the south of Lot 2, Block V of said R.S. Smith's Second Addition; thence S89°52'53"E 179.85 feet along the south line of said Lot 2 to the southeast corner of said lot; thence N22°53'34"W 162.63 feet along the west line of Porter's Land to a point; thence N00°24'01"E 115.23 feet parallel with the easterly line of Forest Avenue and along the east line of Miranda A. Lukin's Land to the south line of South University Avenue; thence west along the south line of University Avenue 115.00 feet to the Place of Beginning, being all of Lot 75 of said Ramson S. Smith's Second Addition, as recorded in Liber 42 of Deeds, Page 446, all of Lot 1 and part of Lot 2, Block V and all of fractional Lot 9, of said R.S. Smith's Second Addition, as recorded in Liber 48 of Deeds, Page 40 and part of the East ½ of the Southwest ¼ Section 28, City of Ann Arbor, Washtenaw County, Michigan.

Containing 35,395 square feet or 0.81 acres of land

Parcel ID: 09-09-28-309-034

Address: 1320 South University Avenue

**Exhibit B**

1320 South University Avenue Area Plan