

624 CHURCH DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement"), made this _____ day of _____, 2014, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY, and Opus Development Company, L.L.C., a Delaware limited liability company, with an address at 9700 Higgins Road, Suite 900, Rosemont, IL 60018, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR is the contract purchaser of a portion of certain land in the City of Ann Arbor, described below in Paragraph T-4 (the "Property"), and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 624 Church (the "Project"), and desires site plan and development agreement approval thereof, and

WHEREAS, the PROPRIETOR desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETOR will install these improvements prior to any permits being issued;

WHEREAS, on _____, City Council approved the site plan ("Site Plan") and this Agreement for 624 Church pursuant to a resolution adopted on that date.

THE PROPRIETOR HEREBY AGREES:

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of private storm water management systems, sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the PROPRIETOR fails to construct the Improvements, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above requiring it to commence and complete the

Improvements in the notice within the time set forth in the notice. After providing reasonable notice to the PROPRIETOR and an opportunity to cure, the CITY may cause the work to be completed at the expense of the PROPRIETOR, if the PROPRIETOR does not complete the work within the time set forth in the notice. Every owner of a portion of the Property, including co-owners of the condominium, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on the property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the Improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Church Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Church Street frontage when such improvements are determined by the CITY to be necessary. A provision shall be included in the master deed of the Project (or Project declaration) stating that if the CITY undertakes to establish a special assessment district to improve Church Street each unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

(P-5) 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 PROPRIETOR, 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-6) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and with respect to General Liability Insurance, naming the CITY as an additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of public improvements and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the public improvements.

(P-7) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$47,120 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to Forest Plaza.

(P-8) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets, and is estimated to be \$338. The City Administrator may authorize the PROPRIETOR to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the PROPRIETOR one year after the date of acceptance by the CITY.

(P-9) To create an association of co-owners, as defined in the Michigan Condominium Act, composed of all owners of the condominium contemplated for the Property, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for 624 Church. (The City acknowledges that an administrator may act on behalf of or in lieu of the Association.) The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, seating structures, driveways, on-site storm water management system, and all other common elements.

(P-10) To prepare and submit to the Planning and Development Services Unit one copy of the master deed and the Project declaration, along with the required review fee, prior to issuance of building permits.

(P-11) To construct, repair and/or adequately maintain on-site the private storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR 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. After providing reasonable notice and an opportunity to cure to the PROPRIETOR, the CITY may cause the work to be completed at the expense of the PROPRIETOR if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-12) After construction of the private on-site storm water management system, to maintain it until the Association assumes responsibility under the master deed. Thereafter, by provision in the master deed (or Project declaration), the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, or Association, at the address listed above, requiring it to commence and complete the maintenance stated in the notice within the time set forth in the notice. After reasonable notice and an opportunity to cure, the CITY may cause the work to be completed at the expense of the PROPRIETOR or Association if the PROPRIETOR or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association or the PROPRIETER for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the PROPRIETOR in the master deed (or Project declaration).

(P-13) 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.

(P-14) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, PROPRIETOR shall review existing noise sources surrounding said development and incorporate necessary design

and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-15) To include the elevation drawings, as submitted to City Council, as part of the Site Plan and to construct all buildings consistent with said elevation drawings. If the PROPRIETOR proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials as determined by the City Planning Manager that those changes be brought back to the City Council for consideration. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-16) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development improvements, and within one month after completion or abandonment of construction.

(P-17) Prior to application for and issuance of certificates of occupancy, to disconnect 29 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the Guidelines for Completion of Footing Drain Disconnections, Table A, adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"). In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, CITY and PROPRIETOR agree to adjust the number of footing drains to be disconnected in accordance with the Guidelines. Capacity constraints during wet weather events have been identified in the trunkline sewers downstream from this development. Therefore, in accordance with the Development Sewage Flow Offset Mitigation Program, the footing drains to be disconnected to offset the proposed flow generated by this Project (as well as the 20% system recovery factor) must be performed upstream of the capacity constraint in the Pittsfield trunkline (near the intersection of Hikone Drive and Packard Road; MH ID 71-62980).

(P-18) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that the building design achieves a minimum of four points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, the most recent version in effect at the date of this agreement, using an industry standard software energy modeling tool (EQUEST or equivalent). Further documentation or verification from an independent, qualified professional that the building achieves the two points shall be provided by the PROPRIETOR prior to any request for or issuance of a first certificate of occupancy.

(P-19) As a requirement for premium use, the Project must achieve LEED Silver certification consistent with all requirements of Ann Arbor City Code, Chapter 55, Section 5:65(2)(c). Within six months of receiving the final Certificate of Occupancy, to provide documentation from an independent, qualified professional that verifies that the Project achieves LEED Silver certification.

(P- 20) Prior to the issuance of a Certificate of Occupancy, PROPRIETOR shall execute a contract with the Ann Arbor Downtown Development Authority ("DDA") to provide a Contribution in Lieu of providing required parking on site in accordance with Chapter 59, Section 5:167 of Ann Arbor City Code. The contract shall require the following terms:

- a. That the PROPRIETOR purchase 48 monthly parking permits in the City of

Ann Arbor Parking System for a minimum of 15 years, and that these parking spaces shall be provided by the DDA in the Forest Avenue Parking Structure.

- b. That the PROPRIETOR may (but shall have no obligation to) extend this initial term of 15 years for three additional terms of five-years each provided that the DDA has received written notice from the PROPRIETOR of the intent to extend at least six months prior to the expiration date of the previous term or extension, as the case may be, and provided PROPRIETOR shall have the right to reduce the number of monthly parking permits during any such extension from the specific number of permits provided in the previous term.. That for the purpose of any of the additional five-year terms, the specific location of the parking spaces assigned shall be determined by the DDA using Transportation Demand Management principles, with the DDA using their best efforts to maintain a predominant portion of these permits in the Forest Avenue Parking Structure.
- c. That the cost of the monthly parking permits shall be the standard system rate for each permit as set from time to time by the Downtown Development Authority, in addition to a contribution equal to 20% of the total monthly parking permit cost.
- d. That the monthly parking permits shall only be used by residents, employees, management and marketing personnel, and other individuals or entities associated with or otherwise having business in the Project, and may not be subleased.

PROPRIETOR agrees and acknowledges that failure to maintain and comply with the off-site parking contract for the initial 15-year term shall be a violation of the zoning ordinance regarding the minimum number of parking spaces required for the Project, consistent with Ann Arbor City Code. CITY agrees and acknowledges that maintaining and complying with the off-site parking contract during the initial 15-year term shall constitute compliance with the current zoning ordinance at the time of Site Plan approval regarding the minimum number of parking spaces required for the Project, consistent with Ann Arbor City Code.

(P-21) PROPRIETOR has purchase and development interests in the Property, except for any mortgage, easements and deed restrictions of record, and that the persons signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this Agreement for PROPRIETOR.

(P-22) 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 following notice and a reasonable opportunity to cure 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 PROPRIETOR complies with the Site Plan and/or the terms and conditions of the this Agreement. The PROPRIETOR 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 this Agreement.

(P-23) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR fails to make timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien,

as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-24) 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 and this Agreement.

(C-2) To use the park contribution described above for improvements to the Forest Plaza.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To record this Agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the PROPRIETOR 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) Except as provided below, this Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably and shall be granted within 7 business days of the request, provided, however, PROPRIETOR may, without the requirement of any approval or consent by the CITY, assign this Agreement to any entity that directly or indirectly through one or more intermediaries is controlled by, controls or under common control with some or all of (a) Opus Development Company, L.L.C., Opus Holding, L.L.C. or Opus Holding, Inc., or (b) a partnership, limited liability company, corporation or other entity comprised of some or all of the above. Whenever such assignment occurs, PROPRIETOR shall provide written notice of such transfer to the City within 15 days.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the Site Plan, shall be binding on and inure to the benefit of any successors and assigns in ownership of the following described parcels:

BEGINNING at the Southeast corner of Lot 2, Block 1, of R.S. Smith's Second Addition to the City of Ann Arbor, recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records, Washtenaw County, Michigan; thence S00°00'00"E 131.75 feet (recorded as 132.00 feet) along the East line of Lot 3 and the East line of Lot 4, Block 1, of said R.S. Smith's Second Addition to the City of Ann Arbor and the West line of Church Street (66 Feet Wide); thence N89°59'09"W 61.92 feet (recorded as West 62.00 feet) along the South line of said Lot 4 and the North line of Willard Street (49.5 feet wide); thence N00°00'00"W 77.90 feet (recorded as 78.00 feet) parallel with the East line of said Lot 3 and the East line of said Lot 4; thence N89°59'09"W 14.08 feet (recorded as West 14.00 feet); thence N00°00'00"W 14.81 feet (recorded as 15.00 feet) parallel with the East line of said Lot 3; thence N89°59'09"W 56.00 feet (recorded as West 56.30 feet); thence N00°00'00"W 104.79 feet (recorded as 104.87 feet) parallel with the East line of said Lot 3 and the East line of said Lot 2; thence N89°54'22"E (recorded as East) 132.00 feet; thence S00°00'00"E 66.00 feet (recorded as 65.95 feet) along the East line of said Lot 2 and the West line of said Church Street to the Place of Beginning, being a part of said Lot 2, said Lot 3 and said Lot 4 of said R.S. Smith's Second Addition to the City of Ann Arbor and containing 0.454 acres of land, more or less.

PARCEL ID# _____

(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 PROPRIETOR, 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 PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) The CITY agrees that it will, from time to time, upon request by PROPRIETOR, execute and deliver to PROPRIETOR and to any parties designated by PROPRIETOR, within fifteen (15) days following demand therefor, an estoppel certificate in a form reasonably acceptable to the parties, certifying (i) that this Agreement is unmodified and in full force and effect (or if there had been modifications, that the same is in full force and effect as so modified), (ii) that there are no defaults hereunder (or specifying any claimed defaults), and (iii) such other matters as may be reasonably requested by PROPRIETOR.

(T-7) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code. By executing this Agreement, the PROPRIETOR and the CITY submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising under this Agreement. The parties stipulate that the venues referenced in the Agreement are convenient and waive a claim of non-convenience.

(T-8) The CITY agrees to give any Mortgagees, by first class, registered, certified, or express mail, a copy of any notice of default served upon PROPRIETOR, provided that prior to such notice the CITY has been notified in writing of the address of any such Mortgagee. The Mortgagee will be given an opportunity to cure concurrent with the PROPRIETOR's opportunity to cure. The PROPRIETOR may collaterally assign its interest in this Agreement in connection with any financing transaction.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ (date) by John Hieftje, Mayor and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ (date) by _____ of Opus Development Company, L.L.C., a Delaware limited liability company, on behalf of the company.

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

Acknowledgement and Agreement of OWNER 1:

PROPRIETOR has entered into an agreement with the owner of record of a portion of the Property, Mockingbird L.L.C., a Michigan limited liability company, with principal address of 47675 Mockingbird Court, Novi, Michigan 48374 (“OWNER 1”) to develop the Property as a condominium. OWNER 1 acknowledges the terms of the 624 Church Development Agreement above, and understands that the entire Property must be combined into a single parcel and remained combined as a single parcel (or included in a condominium consistent with the Michigan Condominium Act) for the Site Plan to remain in compliance with the City’s ordinances, and may only be subsequently divided consistent with City and State laws when the Site Plan no longer controls the use and design Project and Property. OWNER 1 agrees to submit the Property to the Project and also acknowledges and agrees that the 624 Church Development Agreement shall run with the Property and shall be binding on and inure to the benefit of any successors and assigns in ownership of the Property, including OWNER 1.

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ (date) by
_____, _____ of
Mockingbird L.L.C., a Michigan limited liability company, on behalf of the company.

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

Acknowledgement and Agreement of OWNER 2:

PROPRIETOR has entered into an agreement with the owner of record of a portion of the Property, James W. Smiley, an individual residing in Ann Arbor, Michigan, whose address is 1417 Granger, Ann Arbor, Michigan 48104 ("OWNER 2") to acquire a portion of the Property. OWNER 2 acknowledges the terms of the 624 Church Development Agreement above, and hereby consents to PROPRIETOR'S execution thereof.

By: _____
James W. Smiley

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ (date) by
James W. Smiley, an individual residing in Ann Arbor, Michigan.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning & Development Services
ATTN: Wendy Rampson
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265