

8/14/14

STATE STREET VILLAGE DEVELOPMENT AGREEMENT

THIS 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 McKinley, Inc., a Michigan corporation, with principal address at 320 N. Main St., Ann Arbor, MI 48103, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor ("the Property"), described in Paragraph T-4 below and site planned as State Street Village, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as State Street Village, and desires site plan approval 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 building permits being issued.

THE PROPRIETOR(S) HEREBY AGREE(S):

(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 public water and sanitary sewer mains, private storm water management systems, and sidewalks ("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. 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-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 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 grant easements to the CITY for water mains as shown on the approved site plan and the final approved construction plan, subject to City Council approval. PROPRIETOR shall submit a legal description and survey drawing for the easements prior to the request for and issuance of building permits and the easements shall be granted to the CITY in a form acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy.

(P-5) To install all water mains, storm sewers, and sanitary sewers, through the first course of asphalt, pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits.

(P-6) To construct a water main from the Property across 2555 S. State Street and 2295 S. State Street to the existing water main in 2295 State Street as shown on the approved site plan and in the approved construction drawings. PROPRIETOR shall assist the CITY in acquiring an easement for the water main through the property at 2555 S. State Street and 2295 S. State Street. PROPRIETOR shall submit evidence that the owners of 2555 S. State Street and 2295 S. State Street have the authority to grant the easements and shall cooperate and grant the easement as shown on the site plan in accordance with the terms of this Agreement. The evidence must be determined to be satisfactory to the City Attorney prior to the request for and issuance of grading and building permits for the development. PROPRIETOR shall submit a legal description and survey drawing for each easement prior to the request for and issuance of grading or building permits and the easements shall be granted by the owners of 2555 S. State Street and 2295 S. State Street to the CITY in a form acceptable to the City Attorney. The easement must be accepted by City Council prior to the request for or issuance of any certificate of occupancy. PROPRIETOR may request alternative means for the water main to be looped into the existing CITY water system, and the CITY Public Services Area may approve this alternative means in its sole discretion. If alternative means are provided, any necessary easements must be granted to the City consistent with the procedure and timing detailed in this paragraph.

(P-7) 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 approved site plan.

(P-8) 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 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 Improvement 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 Improvements.

(P-9) Existing landmark trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of certificate of occupancy. Existing landmark trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public Improvements or granting of certificate of occupancy, shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-10) To construct, repair and/or adequately maintain on-site 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. 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-11) 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-12) 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-13) To include the elevation drawings, as submitted to City Council, as part of the approved 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, then those changes shall 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-14) 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-15) Prior to application for and issuance of certificates of occupancy, to disconnect 18 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, and adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with 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, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. PROPRIETOR may be allowed to obtain partial certificates of occupancy for the

development prior to the completion of all of the required footing drain disconnects on a prorated basis at the Discretion of the CITY Public Services Area.

(P-16) PROPRIETOR 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 signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this Agreement for PROPRIETOR.

(P-17) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved 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 PROPRIETOR complies with the approved site plan and/or the terms and conditions of 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 approved site plan and/or development agreement.

(P-18) 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 State Street Village project.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) 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) 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.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

2221 S. State St.

COM NW COR SEC 4, T3S, R6E, TH S 00 DEG 37' 30" E 915.09 FT FOR A POB, TH N 88 DEG 01' 30" E 274.05 FT; TH S 01 DEG 58' 30" E 156.54 FT; TH 35.16 FT ALONG A CURVE TO THE LEFT, RAD 230 FT, CH BEARS N 71 DEG 47' 38" W 35.13 FT; TH N 76 DEG 10' 23" W 54.63 FT; TH 79.94 FT ALONG A CURVE TO THE LEFT, RAD 350 FT, CH BEARS N 82 DEG 42' 58" W 79.77 FT; TH N 89 DEG 44' 40" W 112.51 FT; TH N 00 DEG 37' 30" W 112.36 FT TO THE POB, PRT OF THE NE 1/4 OF SEC 5 AND THE NW 1/4 OF SEC 4, CONT .79 ACRES, SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD, IF ANY. Split on 08/06/2008 from 09-12-04-200-044;

2223 S. State St.

COM NW COR SEC 4, T3S, R6E, TH S 00 DEG 37' 30" E 915.09 FT ; TH N 88 DEG 01' 30" E 274.05 FT FOR A POB; TH CONT N 88 DEG 01' 30" E 313.34 FT; TH S 23 DEG 28' 00" E 536.94 FT; TH N 83 DEG 53' 00" W 13.52 FT; TH N 67 DEG 53' 00" W 122.32 FT; TH N 89 DEG 09' 00" W 449.82 FT; TH N 01 DEG 15' 00" W 35.44 FT; TH N 00 DEG 25' 00" W 220.35 FT; TH N 88 DEG 01' 23" E 57.83 FT; TH N 01 DEG 58' 30" W 169.90 FT TO THE POB. CONTAINING 4.47 ACRES MORE OR LESS, AND BEING SUBJECT TO EASEMENTS OF RECORD, IF ANY. Split on 02/19/2008 from 09-12-04-200-039;

Parcel ID #s: _____

(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 approved 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) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

CITY OF ANN ARBOR, MICHIGAN

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

McKinley, Inc.

By: _____
Royal Caswell III, Chief Operating Officer

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 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 ____ day of _____, 2014 by Royal Caswell III, Chief Operating Officer of McKinley, Inc., a Michigan corporation, on behalf of the corporation.

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