

**STATE OF MICHIGAN
COUNTY OF WASHTENAW
CHARTER TOWNSHIP OF PITTSFIELD**

**DEVELOPMENT AGREEMENT AND AMENDMENT TO
THE SWIFT RUN SERVICE CENTER PLANNED UNIT DEVELOPMENT
FOR THE WHEELER CENTER SOLAR ARRAY**

THIS DEVELOPMENT AGREEMENT and AMENDMENT TO SWIFT RUN SERVICE CENTER PLANNED UNIT DEVELOPMENT is by and between the **CITY OF ANN ARBOR**, a Michigan municipal corporation, whose address is 301 E. Huron St, Ann Arbor, MI 48104 (the “City”), and the **PITTSFIELD CHARTER TOWNSHIP**, a Michigan municipal corporation whose address is 6201 West Michigan Avenue, Ann Arbor, Michigan 48108 (the “Township”).

Recitals

- A. The City is the developer and proprietor of the Swift Run Service Center and Wheeler Center located on property described in the attached and incorporated Property Description Exhibit 1, (the “Property”), located in Pittsfield Charter Township, Washtenaw County, Michigan.
- B. Three hundred and fourteen (314) acres of the Swift Run Service Center is owned and maintained by the City of Ann Arbor but located in Pittsfield Charter Township. The Wheeler Center is part of the Swift Run Service Center.
- C. The Swift Run Service Center Planned Unit Development was approved under RZ #04-01, and portions of the Property were developed as the Ann Arbor Maintenance Facility under CSPA #04-21 and as a condition of the approval of CSPA #04-30 for Waste Transfer Station, Material Recovery and Composting, for which the parties entered into a Development Agreement dated February 13, 2006.
- D. The Swift Run Service Center Planned Unit Development was amended by RZ #08-01 in 2008 amending and expanding the PUD allowing for the expansion and modifications of the maintenance facility, a transfer station building, compost equipment storage, composting areas, natural open space areas, and passive recreation areas.
- E. In 2015 the Property was further developed pursuant to CSPA #15-09 with Wheeler Center (Swift Run) Service Center sidewalk non-motorized improvements.
- F. The City has submitted an application to amend the Swift Run Service Center Planned Unit Development (RZ #20-02) Activity Area E to convert approximately seventy-seven (77) acres from “composting, passive recreation, and natural areas” into a solar array. Sixty-five (65) acres will have ground mounted solar arrays and twelve (12) acres will have floating solar arrays on an existing onsite stormwater facility.
- G. Except as specifically amended by this Agreement, all conditions set forth in Swift Run Service Center PUD RZ #08-01 still apply.

- H. As part of both the application and approval process, the City has offered and agreed to make the on-site and off-site improvements depicted on the Wheeler Center Solar Array Site Plan dated {Insert Date} which the Parties agree are necessary and roughly proportional to the burden imposed in order to (i) ensure that public services and facilities affected by the Development will be capable of accommodating increased service and facility loads caused by the Development, (ii) protect the natural environment and conserve natural resources, (iii) ensure compatibility with adjacent uses of land, (iv) promote use of the Property in a socially and economically desirable manner, and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3301 *et seq.*
- I. For the purpose of confirming the rights and obligations in connection with the improvements, development, and other obligations to be undertaken on the Property, the City and the Township enter into this Development Agreement and Amendment to the Swift Run Service Center Planned Unit Development, effective on the date of this Agreement.

Agreement

NOW, THEREFORE, as an integral part of the Development Agreement and Amendment of the Swift Run Service Center Planned Unit Development, zoning of the Property, and approval of the site plan, and for other good and valuable consideration, but no monetary consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED as follows:**

- 1. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below.
 - (A) **“Commencement Date”** means the date that building permits are first issued for any phase of the Project.
 - (B) **“Developer”** means City of Ann Arbor, its successors and assigns.
 - (C) **“Development”** means all Components of the Wheeler Center Solar Array development as shown on the PUD Site Plan, including the infrastructure and all required construction on each Component.
 - (D) **“PUD Site Plan”** means the Wheeler Center Solar Array Preliminary Site Plan (Drawing 2014031-1 dated 12-5-19 last revised 2-11-2020) and all associated plans that have been reviewed by the Planning Commission and approved by the Township Board, including subsequent Final Site Plans.
- 2. **Compliance with Applicable Laws.** All development, use, and improvement of the Property shall be subject to and in accordance with all applicable Township ordinances and county, state and federal laws, and shall also be subject to and in accordance with this Agreement, the PUD Site Plan and all other approvals and permits required under applicable Township ordinances and county, state and federal laws. To the extent that the development of the Property in accordance with this Agreement and the PUD Site Plan deviates from existing Township ordinances, this Agreement and the PUD Site Plan shall control. All references in this Agreement to Township zoning ordinances shall be deemed to refer to the zoning ordinances in effect as of the date of this Agreement. The Development shall not be

subject to any additional zoning requirements contained in any amendment or additions to the zoning ordinances that conflict with the provisions of this Agreement and the PUD Site Plan, provided that all construction and development is completed in compliance with this Agreement and the PUD Site Plan.

3. **Compliance with Conditions of Approval.** All development, use and improvement of the Property shall be in conformance with any and all conditions of approval of the Township Board and Planning Commission pertaining to the Development as reflected in the official resolutions and/or minutes of such approvals. It is specifically agreed that final site plan approval is contingent upon the execution of and compliance with this Agreement.
4. **Permitted Development.** The Property shall be used, developed, and improved only in accordance with the following:
 - (A) Article 6.0, Planned Unit Development, of the Zoning Ordinance of Pittsfield Charter Township.
 - (B) The Township Board adopted ZOA **{insert ZOA #}**, an Ordinance to Amend the approved Swift Run Service Center Planned Unit Development (RZ #08-01) for parcels L-12-15-250-005, L-12-15-250-006, L-12-15-250-009, L-12-15-250-010, L-12-15-300-003, L-12-15-300-005, and L-12-15-400-001 (southeast corner of Ellsworth Road and Stone School Road) on **{insert date}**.
 - (C) The PUD Site Plan, includes approximately seventy-seven (77) acres of a solar array field. The Wheeler Center Solar Array Final Site Plan shall be maintained on file in the offices of the Township.
 - (D) The Planning Commission found that the development met the required standards for a Planned Unit Development as set forth in 6.02.B of the Zoning Ordinance.
 - (E) All applicable Township ordinances and design standards, except for those deviations which have been approved as part of the PUD Site Plan approval.
 - (F) Any and all conditions of approval of the Township Board and Planning Commission pertaining to the Development as reflected in the official minutes of such approvals and in this Agreement.
 - (G) Any revisions or adjustments requested by the Township and/or Permitting Agency, or otherwise required for the approval and permitting of the construction plans.
5. **Effect of Site Plan Development Approval.** The PUD Site Plan consists of those plans attached as Exhibit 2 hereto which have been approved in accordance with the authority granted to and vested in the Township pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006, which along with the Final Site Plan and execution of this Agreement constitute the land use authorization for the Property, and all use and improvement of the Property shall be in conformity with such Wheeler Center Solar Array Final Site Plan, the Conditions of Approval, and this Agreement.

6. **Phasing.** The Property may be developed in multiple phases. Each phase shall be subject to Township review and approval.

7. **Density, Land Use Area, Setbacks, Building Height, and other Regulations.**
 - (A) All structures and site amenities associated with Wheeler Center Solar Array shall be laid-out, situated, and designed in accordance with the approved PUD Site Plan.
 - (B) Solar panel height shall not exceed 16 feet.

8. **Landscaping, Fencing, Screening, and Berms.**
 - (A) Internal landscaping, landscaping amenities, fencing, and screening on the Property shall be completed and maintained as shown and described in the landscape plans, details, and information that are part of the approved PUD Site Plan.
 - (B) Groundcover and pollinating plants shall be planted under the solar arrays.
 - (C) The existing berms on the approved PUD Site Plan shall remain.
 - (D) The City of Ann Arbor shall provide Pittsfield Township with an annual inspection report of the condition of the all required trees on site, and trees in the transition strip, as approved in RZ #08-01, to determine whether action is required. If necessary, the City shall replace trees on site and replace trees and clear vegetation within the transition strip.

9. **Open Space and Natural Features.**
 - (A) The City and all future owners and co-owners shall maintain and preserve all of the aforementioned open space and common areas as protected open space, drainage courses, and natural areas as depicted on the Swift Run Service Center Planned Unit Development, as amended, and the PUD Site Plan.
 - (B) Natural preserves shall be maintained in accordance with the terms and provisions of all the aforementioned agreements, easements, and deed restrictions that have been or are to be recorded in connection with such areas within the Swift Run Service Center Planned Unit Development. Furthermore, Developer, and all of its successors in ownership of any portion or all of the Property, shall at all times comply with any permits issued by the Township, the Michigan Department of Environmental Quality, and any other governmental unit relative to such areas located on the Property.

10. **Construction.** The City of Ann Arbor shall provide a maintenance plan for Stone School Road during construction to be reviewed and approved by the Washtenaw County Road Commission and Pittsfield Township Engineer.

11. **Construction Debris.** The City of Ann Arbor shall remove all discarded building-materials and rubbish at least once every two weeks during installation and construction of site improvements on said site.

12. **Completion of Improvements; Financial Assurances.**

(A) All on-site and off-site improvements of the PUD Site Plan, including without limitation, all drives, entranceways, parking lots, electric utilities, landscaping, screening, soil erosion and sedimentation controls, and any other improvements within or for the Development shall be completely constructed and provided to all buildings and facilities within the Development as required and as set forth in the Site Plan Documents, the approved Final Site Plan, any other approvals or permits granted by the Township, and all applicable ordinances, laws, standards, and regulations.

(B) During the construction of the Development, the City of Ann Arbor shall be obligated to maintain the above improvements and amenities, and as required by the Township's Performance Guarantees ordinance, the City of Ann Arbor shall provide financial assurances satisfactory to the Township for completion, preservation, and maintenance of such improvements on a phase-by-phase basis such that, upon completion, each sub-phase will be capable of standing on its own in terms of the presence of services, facilities, and open space, and shall contain the necessary components to ensure the protection of natural resources and the health, safety, and welfare of the users of the Wheeler Center Solar Array development and the residents of the surrounding area.

(C) Such financial assurances shall be in the form as set forth in Section 3.09, Performance Guarantees, of the Zoning Ordinance, together with an agreement with the Township, approved by the Township Attorney, authorizing the Township, at its option, to complete and maintain such improvements using the funds from the security posted by the City of Ann Arbor if City of Ann Arbor has failed to complete and/or maintain the improvements within the time specified therein. If City of Ann Arbor proceeds with any sub-phase within the development of the Property, City of Ann Arbor shall be obligated to design and completely construct all of the improvements and amenities required for said sub-phase.

(D) Upon completion of each sub-phase of construction and the corresponding successful inspections, the Township shall issue a Certificate of Occupancy for a building(s) located in that sub-phase. The Developer may request and receive a Certificate of Occupancy for a building or buildings within a sub-phase prior to completion of that sub-phase if 1) a majority of the work, especially that work essential for ensuring the health, safety and welfare of the residents within that sub-phase is completed, and the remaining sub-phase work is minor and incidental to the occupancy of that sub-phase, and 2) site conditions at that time preclude completion of the work in a timely manner (e.g. installing landscaping in the winter) and 3) if financial sureties of a sufficient amount to complete the uncompleted work are provided or remain in place with the Township.

- (E) Upon issuance of a Certificate of Occupancy for a sub-phase, and also upon completion and dedication of primary utility lines (storm, water, sanitary), the appropriate bond(s) or monies held in escrow by the Township shall be released to the developer or issuing entity.

13. **Township Enforcement.** In the event there is a failure to timely perform any obligation or undertaking required under or in accordance with the Site Plan Documents, the Township may serve written notice upon the City setting forth such deficiencies and a demand that the deficiencies be cured within a stated reasonable time period, and if not cured, the date, time, and place for a hearing before the Township Board, or such other board, body, or official delegated by the Township Board, for the purpose of allowing the violating party an opportunity to be heard as to why the Township should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain at the discretion of the Township Board. The foregoing notice and hearing requirements shall not be necessary in the event the Township determines in its discretion that an emergency situation exists requiring immediate action. If, following the hearing described above, the Township Board, or such other board, body, or official designated to conduct the hearing, shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, or if an emergency circumstance exists as determined by the Township in its discretion, the Township shall thereupon have the power and authority, but not the obligation, to take any or all of the following actions, in addition to any actions authorized under Township ordinances and/or State laws:

- (A) Enter upon the Property, or cause its agents or contractors to enter the Property, and perform such obligation or take such corrective measures as reasonably found by the Township to be appropriate. The cost and expense of making and financing such actions by the Township, including notices by the Township and legal fees incurred by the Township, plus an administrative fee in an amount equivalent to twenty-five percent (25%) of the total of all such costs and expenses incurred, shall be paid by the violating party within thirty (30) days of a billing to the violating party. The payment obligation under this paragraph shall be secured by a lien against the phase or phases of the Property within which the deficiency exists, which lien shall be deemed effective as of the date of the initial written notice of deficiency provided to the violating party pursuant to this paragraph, or in emergency circumstances, the date at which the Township incurred its first cost or expense in taking corrective action. Such security shall be realized by placing a billing which has been unpaid by the violating party for more than thirty (30) days on the delinquent tax rolls of the Township relative to such portion of the Property, to accumulate interest and penalties, and to be deemed and collected, as and in the same manner as made and provided for collection of delinquent real property taxes. In the discretion of the Township, such costs and expenses may be collected by suit initiated against the violating party, and, in such event, the violating party shall pay all court costs and attorney fees incurred by the Township in connection with such suit if the Township prevails in collecting funds thereby. This provision does not preclude the Township from exercising its rights under other sections of this Agreement.

- (B) Initiate legal action for the enforcement of any of the provisions, requirements, or obligations set forth in the Site Plan Documents. Except in emergency circumstances, the violating party shall be provided notice of the deficiencies from the Township and shall be afforded an opportunity to timely correct. In the event the Township obtains any relief as a result of such litigation, the violating party shall pay all court costs and attorney fees incurred by the Township in connection with such suit.
 - (C) The Township 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 violating party is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Development.
14. **Delay in Enforcement; Severability.** Any failure or delay by the Township to enforce any provision herein contained shall in no event be deemed, construed, or relied upon as a waiver or estoppel of the right to eventually do so thereafter. Each provision and obligation contained herein shall be considered to be an independent and separate covenant and agreement, and in the event one or more of the provisions and/or obligations shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining provisions and/or obligations shall nevertheless remain in full force and effect.
15. **Access to Property.** In all instances in which the Township utilizes the proceeds of a financial assurance given to ensure completion or maintenance of improvements, and at any time throughout the period of development and construction of any part of the Development, the Township and its contractors, representatives, consultants, and agents shall be permitted and are hereby granted authority to enter upon all or any portion of the Property for the purpose of inspecting and/or completing the respective improvements and for the purposes of inspecting for compliance with and enforcing the Site Plan Documents.
16. **Agreement Jointly Drafted.**
- (A) The Parties have negotiated the terms of the Site Plan, and such documentation represents the product of the joint efforts and mutual agreements of the Parties. The City of Ann Arbor fully accepts and agrees to the final terms, conditions, requirements, and obligations of the Site Plan Documents, and they shall not be permitted in the future to claim that the effect of the Site Plan Documents results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of the Site Plan Documents causes an inverse condemnation, other condemnation or taking of all or any portion of the Property.
 - (B) Furthermore, it is agreed that the improvements and undertakings described in the Site Plan Documents are necessary and roughly proportional to the burden imposed and are necessary in order to: (i) ensure that public services and facilities necessary for and affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development; (ii) protect the natural environment and conserve natural resources; (iii) ensure compatibility with adjacent uses of land; (iv) promote use of the Property

in a socially, environmentally, and economically desirable manner; and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3301 *et seq.*

- (C) It is further agreed and acknowledged hereby that all such improvements, both on-site and off-site, are clearly and substantially related to the burdens to be created by the development of the Property, and all such improvements without exception are clearly and substantially related to the Township's legitimate interests in protecting the public health, safety, and general welfare.
- (D) The Parties acknowledge and agree that such improvements, both on-site and off-site, have been found to be necessary and constitute a recognizable and material benefit to the ultimate users of the Development and to the community, which benefit would otherwise be unlikely to be achieved without the Development and is an important component of the Development upon which the Township relied in its consideration and approval of the Wheeler Center Solar Array Development.

17. **Ambiguities and Inconsistencies.** Where there is a question with regard to applicable regulations for a particular aspect of the Development, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the Site Plan Documents which apply, the Township, in the reasonable exercise of its discretion, shall determine whether the regulations of the Township's Zoning Ordinance, as that Ordinance may have been amended, or other Township Ordinances shall be applicable provided such determination is not inconsistent with the nature and intent of the Site Plan Documents. Whenever possible under the laws of the State and ordinances of the Township, the approval of the site plan shall be determined to be a reasonable and minor waiver or modification to the applicable Township regulation or Ordinance, so that the particular aspect of the Development that is in question shall be deemed acceptable. In the event of a conflict or inconsistency between two or more provisions of the Site Plan Documents, or between the Site Plan Documents and applicable Township ordinances, the more restrictive provision, as determined in the reasonable discretion of the Township, shall apply, provided that applying the more restrictive provision does not result in loss of Development density, impair the operations of the Development, or otherwise negate the general intent of the Developer and the acceptance of the Planning Commission demonstrated by their approval of the Site Plan.
18. **Running with the Land; Governing Law.** This Development Agreement shall run with the land constituting the Property, and shall be binding upon and inure to the benefit of the Parties and all of their respective heirs, successors, assigns, and transferees. This Agreement shall be recorded by any of the Parties following the execution of this Agreement. This Development Agreement shall be interpreted and construed in accordance with Michigan law and shall be subject to enforcement only in Michigan courts. The parties understand and agree that this Development Agreement is consistent with the intent and provisions of the Michigan and U.S. Constitutions and all applicable law.
19. **Assignment.** Developer may not assign its rights under this Development Agreement without the prior written approval of the Township, which shall not be unreasonably

withheld. The Township may require the assignee to enter into a Development Agreement and provide the financial assurances required by Paragraph 14 of this Agreement and Section 3.09 of the Pittsfield Charter Township Zoning Ordinance prior to approving the assignment. No assignment shall be effective unless the applicable financial assurances required of assignee are in effect and have been approved by the Township.

20. **Recording.** This Agreement may be recorded with the Washtenaw County Register of Deeds. If this Agreement is not recorded in its entirety, an Affidavit shall be recorded in accordance with the Final Site Plan, upon approval by the Township Attorney, containing the legal description of the entire project, specifying the dates of approval and all amendments of the Final Site Plan, and declaring that all future development of the Property has been authorized, restricted, and required to be carried out only in accordance with the Final Site Plan.
21. **Amendments and Modifications.** The provisions of this instrument may be amended or modified, but only with the prior written consent of the Township and the Development's Owner(s). Any amendment or modification to this agreement shall be recorded in the Washtenaw County Records. Any portion of this instrument not otherwise amended or modified, shall remain in full effect.

THIS DEVELOPMENT AGREEMENT AND AMENDMENT TO THE SWIFT RUN SERVICE CENTER PLANNED UNIT DEVELOPMENT was executed by the respective Parties on the date specified with the notarization of their signatures and shall be considered to be dated on **[date]**, and shall take effect on the effective date of Ordinance **[]** adopted by the Township Board on said date.

[Intentionally Blank. Signatures Commence on Next Page.]

Craig Hupy, Public Services Area
Administrator

Approved as to form and content:

Stephen K. Postema, City Attorney

Drafted by and when recorded, return to:
James A. Fink (P40386)
320 N. Main St., Ste. 420
Ann Arbor, MI 48104
734-994-1077

Parcel ID:

Recording Fee:

EXHIBIT 1
Legal Description

EXHIBIT 2
PUD Site Plan