

732 PACKARD (“FIVE CORNERS”) PUD DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2024, 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 CS Acquisition Vehicle, LLC, an Illinois limited liability corporation, with principal address at 1643 North Milwaukee Avenue, Chicago, Illinois, 60647, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described in Paragraph T-4 below (the “Property”) and site planned as 732 Packard “Five Corners” (the “Project”), and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 732 Packard “Five Corners”, and desires PUD Site Plan and development agreement approval thereof, and

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

WHEREAS, on _____, 2024, City Council approved the 732 Packard “Five Corners” Site Plan (“Site Plan”) and the 732 Packard “Five Corners” Development Agreement (“Agreement”) pursuant to a resolution adopted on that date, and

WHEREAS, the CITY desires to ensure that all of the Improvements required by pertinent CITY ordinances and regulations be properly made, and that the DEVELOPER will install these Improvements prior to any permits being issued.

THE DEVELOPER 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 public water main, private storm water management system, public street restoration, public sidewalk and amenity zone pavement, traffic signals and street lights (“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 DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER, if the DEVELOPER 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 condominium units, 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 that 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 private 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 DEVELOPER'S engineer inspects.

(P-4) To grant an easement to the CITY for three-foot sidewalk easements along the Packard Street and South State Street frontage of the Property as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings 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 reasonably 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, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South State Street and/or Packard Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South State Street and/or Packard Street frontage when such Improvements are determined by the CITY to be necessary.

(P-6) 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 DEVELOPER, 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-7) 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 additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public Improvements in the Project prior to final written acceptance of the public Improvements 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 Improvements and until notice of acceptance by the CITY of the Improvements.

(P-8) For the benefit of the residents of the DEVELOPER'S Project, to prepare and submit to the CITY for approval plans and specifications to improve Forsythe Park, including removing the existing kiosk, removing existing wood retaining walls and restoring the area,

pavers and pavement work, drinking fountain replacement, furnishing repairs and replacement, lighting repairs and replacement, and basketball court surface, backboard, and net repairs and replacement ("Park Improvements") provided that no work shall be commenced until the plans and specifications have been approved by the City Administrator or designee and until such other relevant information to the CITY service areas as shall be reasonably required has been provided. The DEVELOPER shall construct and complete the Park Improvements at the DEVELOPER's cost prior to the request for or issuance of any certificate of occupancy, and shall provide the City with documentation that the value of the material and labor for the Park Improvements is at least \$250,000.00. If the Park Improvements are delayed for reasons outside of the DEVELOPER's control, DEVELOPER may post a bond with the CITY equal to \$250,000.00 in order to release the applicable certificate of occupancy. The CITY shall release this bond upon its acceptance of the Park Improvements.

(P-9) For the benefit of the Project, DEVELOPER agrees to enter into a contract with DTE for up to 110% of the projected \$1,600,000.00 cost to complete system work necessary to create electrical capacity for the total load necessary to allow the Project to eliminate residential natural gas use. The scope of work for necessary system work shall be described in a contract between DTE and DEVELOPER (the "DTE Contract") and shall result in capacity to serve the Project as an all-electric building. DEVELOPER shall provide evidence of entering into such a contract prior to request for or issuance of certificates of occupancy. Notwithstanding the forgoing, if DTE is unable to perform the scope necessary to serve the project without a residential natural gas use for less than 110% of \$1,600,000 within 12 months of execution of the DTE Contract, DEVELOPER shall provide CITY with evidence thereof and shall be released from all obligations set forth in this Paragraph P-9.

(P-10) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER if the DEVELOPER 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) Prior to the issuance of any grading or building permits for the Site Plan, for the benefit of the Property and in order to comply with Ann Arbor City Code requirements for site access and traffic impacts of the Project on nearby roads, to enter into an agreement with the CITY detailing specific public improvements ("Traffic Mitigation Improvements") to be made in order to mitigate access and traffic impacts of the development, including the accommodation of the Project driveway. The agreement shall be approved for the City by the City Administrator. The Traffic Mitigation Improvements as shown on the Site Plan, as further specified in civil construction plans, shall include: the complete redesign and reconstruction of the traffic signals controlling the intersection of South State Street at Hoover Street. The complete redesign and reconstruction shall include, but not be limited to: replacing and providing new traffic control equipment (indications, support structures, communications, and controls); the relocation of the controller cabinet; relocation of poles to allow for the Project driveway; and rerouting underground communication cables. All Traffic Mitigation Improvements shall be constructed

consistent with all applicable laws and standards and shall include all work necessary to restore impacted intersections, streets, sidewalks, and other public infrastructure. The final design and civil construction drawings for Traffic Mitigation Improvements shall be completed by the DEVELOPER, and the Improvements shall be constructed by the DEVELOPER. All design, review and construction costs for the Traffic Mitigation Improvements shall be paid for by the DEVELOPER prior to the request for and issuance of any first certificate of occupancy for the Project, although such Traffic Mitigation Improvements may be accepted at a later time as determined by the City Public Services Area.

(P-13) To design, construct, repair and maintain this Project in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said Project will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said Project 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-14) 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 DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-15) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the Project, and within one month after completion or abandonment of construction.

(P-16) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the Project has been designed to achieve a minimum of LEED Silver (v4.0 or newer) under the U. S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent). Prior to issuance of any certificate of occupancy the DEVELOPER shall either have the building certified by the USGBC, the project architect, or provide some other evidence acceptable to the CITY demonstrating that the structure meets or exceeds the LEED Silver standard.

(P-17) Within two years of issuance of the final certificate of occupancy for the Project, to provide documentation of USGBC LEED Silver certification. Failure to demonstrate full compliance with the Applicant's commitment to achieve the requested LEED Certification premium shall be a violation of this Agreement. The penalty for each violation is an amount determined by the following formula: $P = [(LC-CE) / LC] \times CV \times .075$.

Where:

- P is the penalty;
- LC is the minimum number of credits to earn the requested LEED Certification;
- CE is the number of credits earned as documented by the U.S. Green Building Council report;

- CV is the construction value, as set forth on the building permit for the new Structure;

No additional penalty will be imposed by the CITY for failure to comply to the commitment after the penalty is paid in full and the Project will be deemed conforming to the 732 Packard PUD Supplemental Regulations and this Agreement. In the event that the penalty payment is not made within 45 days of notice by the City of Ann Arbor, the City may initiate revocation of any and all certificates of occupancy for non-compliance with City codes and regulations, or seek any other remedy available in this Agreement or allowed by law.

(P-18) To provide partial solar power for the Project by installing solar panels to produce a minimum rated capacity of 125,000 kWh per year, in operation prior to the request for or issuance of any certificate of occupancy.

(P-19) Prior to the issuance of the first certificate of occupancy, to pay to the CITY an affordable housing contribution of \$6,620,604.00 to be deposited in the City of Ann Arbor Affordable Housing Fund in compliance with Ann Arbor City Code and the approved Supplemental Regulations for the Property, unless prior to the issuance of the certificate of occupancy the CITY and DEVELOPER have agreed on a plan for DEVELOPER constructing at least 16% of the residential floor area as Affordable Housing for Low Income Households as defined in Ann Arbor City consistent with the approved Supplemental Regulations for the Property.

(P-20) DEVELOPER 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 DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-21) 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 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 DEVELOPER complies with the Site Plan and/or the terms and conditions of the Agreement. The DEVELOPER 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/or Agreement.

(P-22) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a 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 Project 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-23) 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 732 Packard "Five Corners" Site Plan.

(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 DEVELOPER 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 DEVELOPER provides the CITY with prior notice. Notwithstanding the foregoing, DEVELOPER is permitted to collaterally assign this Agreement to its mortgage lender without prior notice to the CITY, and any transfers of this Agreement in connection with such mortgage lender's rights shall not be prohibited hereunder.

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

City of Ann Arbor, Washtenaw County, Michigan

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18'08"W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03'51"W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15'03"W 56.33 feet; thence S88°43'13"W 70.89 feet; thence N01°23'37"W 269.88 feet along the West line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR" and its' extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13'35"E 36.07 feet; thence N50°56'09"E 35.98 feet; thence S39°03'51"E 322.28 feet along the Northeasterly line of said "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF

BEGINNING. Being part of Lots 1, 3, & 4 and all of Lot 2, Block 4 of "MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR", as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records. Being part of the NW 1/4 of Section 33, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 1.27 acres of land, more or less.

Tax ID. No.

(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 DEVELOPER, 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 DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER 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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

[Signatures on the following page]

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

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Milton Dohoney Jr., City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

STATE OF _____)
County of _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

CS Acquisitions Vehicle, LLC

By: _____
[Name, Title]

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, _____ of CS Acquisitions Vehicle, LLC, an Illinois limited liability company, on behalf of the company.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Kevin S. McDonald (P-61761)
Chief Deputy City Attorney
City of Ann Arbor
Office of the City Attorney
P.O. Box 8647
Ann Arbor, MI 48107-8647