

Version Date: 10-17-19

### **THE VIC SOUTH DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 South University-South, LLC, a Michigan limited liability company, with principal address at 30100 Telegraph Road, Suite 220, Bingham Farms, Michigan 48025, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as The Vic Village South, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Vic Village South, and desires 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, 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, public sanitary sewer main, public storm sewer main, 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 in accordance with City standards, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct the 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 a reasonable time as 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-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 DEVELOPER'S engineer inspects.

(P-4) To install all water mains, sanitary sewer mains and storm sewer mains 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, except as allowed by the CITY Public Services Area in accordance with City Ordinance and Public Service Department Standard Specifications.

(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 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 approved 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 naming the CITY as 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-7) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$83,125.00 to the CITY Parks and Recreation Services Unit prior to the issuance of a certificate of occupancy for improvements to a downtown park.

(P-8) That the DEVELOPER is responsible for the completion of the South University Streetscape Improvement Plan on the south side of South University Avenue between East University Avenue and Church Street, as shown on the approved site plan and approved DDA Streetscape Improvement Construction Plan, prior to the issuance of a certificate of occupancy. The DEVELOPER may enter into separate agreements with the Downtown Development Authority (DDA) to further clarify, coordinate, or amend the provision and procurement of labor and materials and reimbursements referenced on the approved site plan as necessary to complete the work as either the DEVELOPER or the Downtown Development Authority desires.

(P-9) 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. The City Administrator may authorize the DEVELOPER 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 DEVELOPER one year after the date of acceptance by the CITY.

(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 a reasonable time as 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 upon request by the CITY.

(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, DEVELOPER 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 submit signed and sealed drawings to the CITY reflecting the building elevations, aesthetics, and materials approved by City Council and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, aesthetics, or materials, that those changes be submitted to the City Council for approval. Nonmaterial changes to the approved building elevations, aesthetics, or materials may be approved by the Planning and Development Services Manager or designee.

(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) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. 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).

(P-16) To provide a minimum of 14 units in this Project designated as Affordable Housing for Lower Income Households at or below 80% of the Area Median Income, as defined by Chapter 55, Unified Development Code. Designated units shall be a minimum of

600 square feet and shall remain affordable for the life of the building. The PROPRIETOR or its designee shall verify the income eligibility of any prospective tenant, and annually thereafter, using a form approved by the CITY, and the CITY or its designee shall certify that the renter is income eligible. The PROPRIETOR agrees to execute a Housing Affordability Covenant with the CITY, and to record such covenant prior to recording of the Master Deed.

(P-17) To pay the meter removal fee of \$78,426 for the removal of one on-street parking meter spot on East University. Payment shall be made before the issuance of the first Certificate of Occupancy.

(P-18) 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 persons signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-19) 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 DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved 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 approved site plan and/or Agreement.

(P-20) 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 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-21) 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 Vic Village South Site Plan.

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

(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 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 prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the DEVELOPER, 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:

Commencing at the NE Corner of Lot 65 of "R.S. Smith's Addition to the City of Ann Arbor", as recorded in Liber 42 of Deeds, Pages 446 & 447, Washtenaw County Records, thence S 88°35'57" W 66.41 feet (66.00 feet recorded) along the North line of Lot 65 of said "R.S. Smith's Addition to the City of Ann Arbor" and along the South line of South University Avenue (66.00 feet wide) to the Point of Beginning:

thence S 01°10'41" E 86.84 feet along the West line of said Lot 65;

thence N 88°40'32" E 66.42 feet;

thence S 01°11'02" E 40.00 feet along the East line of said Lot 65 and along the West line of Church Street (66.00 feet wide);

thence S 88°40'32" W 111.84 feet;

thence S 01°10'41" E 5.00 feet;

thence S 88°40'32" W 21.00 feet along the South line of Lot 64;

thence N 01°10'20" W 22.10 feet along the West line of Lot 64;

thence S 88°40'32" W 115.73 feet;

thence N 01°09'47" W 109.49 feet along the East line of East University Avenue (50.00 feet 1/2 width);

thence N 88°35'57" E 182.12 feet along the North line of Lots 62, 63 and 64 of said "R.S. Smith's Addition to the City of Ann Arbor" and along the South line of said South University Avenue to the Point of Beginning. Being a part of the E 1/2 of the SW 1/4 of Section 28, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 0.55 acres of land, more or less. Being subject to easements and restrictions of record, if any.

Parcel ID: 09-09-28-311-006  
09-09-28-311-007  
09-09-28-311-005  
09-09-28-311-004  
09-09-28-310-003

09-09-28-310-002  
09-09-28-310-021

(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 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 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.

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:

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

South University-South, LLC, a Michigan Limited Liability Company  
By: Bingham Realty Group, LLC, a Michigan Limited Liability Company  
Its: Managing Member  
By: Patricia M. Fix  
Its: Manager

\_\_\_\_\_  
Patricia M. Fix, Managing Member

STATE OF MICHIGAN )  
 ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Christopher Taylor, Mayor and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

STATE OF \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_ of \_\_\_\_\_, a Michigan limited liability company, Manager of \_\_\_\_\_, a Michigan limited liability corporation, on behalf of the company.

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

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