



MIDTOWN ANN ARBOR CONDOMINIUM DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this 14 day of October, 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 Midtown Ann Arbor, LLC, a Michigan limited liability company, with principal address at 25925 Telegraph Rd., Southfield, MI 48033, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as Midtown Ann Arbor Condominium, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Midtown Ann Arbor Condominium (now known as Midtown Ann Arbor), 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 and sanitary sewer mains, a water pump station, and private storm water management systems ("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 Submitted for Recording
Date 11-5 2019 Time 2:31 pm
Lawrence Kestenbaum
Washtenaw County Clerk/Register

time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units if applicable, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to a 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 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 grant easements to the CITY for public utilities and public streets as shown on the approved site plan and construction drawings, 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 provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-6) To install all water mains, storm sewers, and sanitary sewers, 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-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 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-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 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 woodland and landmark trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER 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 woodland and 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 DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-10) To convey to the CITY, prior to the issuance of any certificate of occupancy, subject to acceptance by the Ann Arbor City Council, land of approximately 1.06 acres for a public park as shown on the approved site plan. The conveyance shall be made by a warranty deed in a form acceptable to the CITY Attorney. The DEVELOPER shall record the deed and its conveyance to the CITY as public parkland.

(P-11) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$80,000 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to Hansen Nature Area and Park, Dicken Woods, South Maple Park, Almendinger Park, Dolph Nature area and Veterans Memorial Park.

(P-12) To deposit, prior to any building permits being issued, a street tree planting escrow account with Public Services 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-13) If converted into a condominium, to create an association composed of all owners of Midtown Ann Arbor Condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for Midtown Ann Arbor Condominium. 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, storm water management system servicing the property, and all other common elements.

(P-14) To construct, repair and/or adequately maintain the 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-15) If developed as or converted to a condominium, to maintain the storm water management system servicing the property until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, if applicable, by provision in the master deed, 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 DEVELOPER or Association, as applicable, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, 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. The CITY may cause the work to be completed at the expense of the DEVELOPER or Association if the DEVELOPER 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 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 DEVELOPER in the master deed.

(P-16) After construction of the private storm water management system servicing the property, 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.

(P-17) Prior to the issuance of any permits, to submit to the CITY Land Development Coordinator for review and approval a Wetland Monitoring Plan, to implement the plan concurrently with construction of the site Improvements, and to submit an annual report regarding implementation of the Wetland Monitoring Plan recommendations to the CITY following issuance of certificates of occupancy.

(P-18) If converted to a condominium, to prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-19) That traffic mitigation measures in the South Maple Road corridor will be beneficial to the DEVELOPER'S property and, therefore, to pay the CITY \$150,000 for its share of the cost for traffic mitigation measures, which may include, but are not limited to one or more of the following:

a) Equipment for traffic signalization changes at the South Maple Road and Pauline Boulevard intersection.

b) Other less traditional measures, which will similarly mitigate excess traffic, flow at the intersection with similar benefit to the DEVELOPER'S property by facilitating decreased use of automobiles and increased use of alternate modes of transportation. These measures may include, but are not limited to, pedestrian crosswalk Improvements.

The DEVELOPER will pay the CITY, within 60 days of invoicing, its share of the cost of the traffic mitigation measures. The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. However, the CITY agrees that it will not charge the DEVELOPER for more than \$150,000, as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.

(P-20) 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-21) 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-22) No lot in Midtown Ann Arbor Condominium may be divided such that an additional building parcel is created.

(P-23) 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(s) signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-24) 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-25) 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-26) 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 Midtown Ann Arbor Condominium.

(C-2) To use the park contribution described above for Improvements to Hansen Nature Area and Park, Dicken Woods, South Maple Park, Almendinger Park, Dolph Nature Area and Veterans Memorial Park.

(C-3) To use the \$ \$150,000 contribution for traffic mitigation measures at the South Maple Road corridor.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) To record this Agreement with the Washtenaw County Register of Deeds.

(C-6) Other items as needed.

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 East 1/4 corner of Section 36, T2S, R5E, City of Ann Arbor, Washtenaw County, Michigan; thence N 01°19'00" W 126.81 feet along the East line of said Section 36 and the centerline of Maple Road (66 feet wide) to the POINT OF BEGINNING;

thence S 88°41'00" W 343.00 feet;

thence S 01°19'00" E 129.40 feet measured (129.64 feet recorded);

thence S 88°15'01" W 798.16 feet measured (797.99 feet recorded) along the E-W 1/4 line of said Section 36;

thence along the Easterly right-of-way line of the I-94 Expressway in the following three (3) courses:

Northerly 1142.10 feet in the arc of a non-tangential circular curve to the right, radius 3674.83 feet, central angle 17°48'25", long chord N 06°02'52" W 1137.51 feet;

N 87°08'20" W 20.00 feet;

N 02°51'40" E 568.31 feet;

thence N 88°09'00" E 306.50 feet;

thence S 04°27'00" E 649.24 feet;

thence S 85°04'06" W 339.94 feet;

thence Southerly 518.20 feet along the arc of a non-tangential circular curve to the left, radius 3644.83 feet, central angle 08°08'46", long chord S 02°44'08" E 517.77 feet;

thence N 88°15'01" E 755.58 feet;

thence Northeasterly 433.94 feet along the arc of a non-tangential circular curve to the right, radius 383.00 feet, central angle 64°54'57", long chord N 56°13'32" E 411.10 feet;

thence N 88°41'00" E 95.54 feet;

thence S 01°19'00" E 608.34 feet along the East line of said Section 36 and the centerline of said Maple Road to the POINT OF BEGINNING. Being a part of the NE 1/4 of Section 36, T2S, R5E, City of Ann Arbor, Washtenaw County,

Midtown Ann Arbor, LLC

By: [Signature]
David Cohen, Manager

STATE OF Michigan
County of Oakland ss:

The foregoing instrument was acknowledged before me this 14th day of October, 2019 by David Cohen, Manager of Midtown Ann Arbor, LLC, a Michigan limited liability company, on behalf of the company.

Tracy L Kouba
Notary Public, Wayne County
State of Michigan
My Commission Expires 11/20/21
Acting in Oakland County

[Signature]
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
ATTN: Brett Lenart
✓ Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265