

**VALHALLA ANN ARBOR DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2021, 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 PEFT LLC c/o Peritus Ventures, LLC, a Michigan limited liability company, with principal address at 1175 West Long Lake Road, Suite 202, Troy Michigan, 48009 , hereinafter called the DEVELOPER, witnesses that:

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

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as *Valhalla 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(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, sanitary lift station, public and private storm water management systems, public streets, sidewalks and streetlights ("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 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) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities and public streets. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(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. At the request of the DEVELOPER, the CITY will provide and install all street name signs and invoice the DEVELOPER for actual cost of installation.

(P-6) To install all water mains, storm sewers, sanitary sewers, and sanitary lift station, and 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. The final course of asphalt paving shall be completed prior to the issuance of first certificate of occupancy on the site.

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South Main Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South Main Street, frontage when such Improvements are determined by the CITY to be necessary.

(P-8) 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-9) 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-10) Existing landmark and street 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 landmark and street 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 55 of the Ann Arbor City Code.

(P-11) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$150,000 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to surrounding area parks such as Cranbrook, Ward, Waymarket parks, and regional community-wide parks such as Veterans Memorial Park, Gallur Park, and Buhr Park

(P-12) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Public 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-13) 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-14) 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-15) That traffic mitigation measures in South Main Street will be beneficial to the DEVELOPER'S property:

Prior to the issuance of any Certificate of Occupancy, closing the median opening to all movements except the northbound left. Modification to the median and opening is required prior to any occupancy of the proposed development. Centerline hardening for the approach to the Scio Church Road intersection will also be needed.

The design process for this project will require engagement with the public regarding the proposed changes. The process for public engagement shall follow the City's Public Engagement Toolkit and be designed to an International Association for Public Participation level of "Consult".

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. The DEVELOPER will be solely financially responsible for the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.

Full compliance and payment by the DEVELOPER for all improvements resulting from this requirement shall be completed prior to the issuance of any Certificate of Occupancy.

(P-16) To provide partial solar power for the Project by installing solar panels on the roof of the Project, as shown on the Site Plan, and subsequent construction drawings. The solar panels shall produce a minimum rated capacity of 500,000 kWh per year. The DEVELOPER will provide written verification by a solar energy consultant, prior to the request or issuance of any certificate of occupancy, that the solar panels have been installed in accordance with the site plan approved for the project. In accordance with Phasing plan shown on Sheet 03(Layout Plan) of the approved site plan, a minimum of 65%(or equivalent to 325,000 kWh capacity) must be installed and functioning before a Certificate of Occupancy will be issued for Phase 1A. The remaining 35%(175,000 kWh capacity) must be installed before a Certificate of Occupancy will be issued or Phase 1B.

(P-17) To provide a minimum of 15 units leased at or below rents, inclusive of utilities, to be affordable to households at or below 60 percent of the Area Median Income as defined and updated by the United States Department of Housing and Urban Development (HUD) in perpetuity. The DEVELOPER or its designee shall verify the income eligibility of the tenant using a form approved by the CITY and the CITY or its designee shall certify that the renter is income eligible and rental rates compliant with this paragraph and Housing Affordability Agreement. The DEVELOPER agrees to execute a Housing Affordability Agreement with the CITY, and to record such agreement.

(P-18) 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-19) 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 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-20) 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-21) As part of the application for the first building permit for vertical construction, to provide documentation from a qualified professional that verifies the building has been designed and will be constructed to achieve a minimum of LEED SILVER under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) for Building Design and Construction: Multifamily Midrise v4 rating system, and demonstrating an 8% improvement over the baseline building performance rating based on the most recent version of LEED v4.0 (i.e., ASHRAE 90.1-2010) in effect at the date of this Agreement. Compliance with this last requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST, HERS or equivalent).

(P-22) 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 (have) legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-23) 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-24) 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-25) 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 *Valhalla Ann Arbor*.

(C-2) To use the park contribution described above for Improvements to the Cranbrook, Ward, Waymarket parks, and regional community-wide parks such as Veterans Memorial Park, Gallup Park, and Buhr Park.

(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:

City of Ann Arbor, Washtenaw County, Michigan

LEGAL DESCRIPTION OF PARCELS OF LAND LOCATED IN THE N 1/2 OF SECTION 5, T2S, R6E, PITTSFIELD TOWNSHIP AND THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

The overall parcel being more particularly described as the following:

Commencing at the true N 1/4 corner of Section 5, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N89°56'00"E 591.30 feet along the north line of said Section 5; thence S02°07'30"W 66.05 feet to the POINT OF BEGINNING;

thence continuing S02°07'30"W 568.50 feet;

thence N89°57'00"W 750.26 feet;

thence N03°25'00"W 281.06 feet along the centerline of South Main Street Road (66' wide); thence along the centerline of Ann Arbor-Saline Road (Variable Width) in the following two (2) courses:

94.89 feet along a non-tangential curve to the left, radius 287.92 feet, central angle 26°19'02",

and a long chord of N17°39'32"E 131.09 feet

N04°30'00"E 161.80 feet;

thence N90°00'00"E 146.83 feet;

thence N89°56'00"E 588.80 feet to the POINT OF BEGINNING. Being part of the N 1/2 of Section 5, T2S, R6E, Pittsfield Township and the City of Ann Arbor, Washtenaw County, Michigan, and containing 9.83 acres of land, more or less. Being subject to the rights of the public of the Westerly 33 feet thereof as occupied by said South Main Street Road, and that westerly portion thereof as occupied by said Ann Arbor-Saline Road, also being subject to easements and restrictions of record, if any. [CITY WILL ADD PARCEL NUMBERS]

(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:

\_\_\_\_\_  
Tom Crawford, City Administrator

Approved as to Form:

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

PEFT DEVELOPMENT LLC

By: \_\_\_\_\_  
Anthony Toth, PEFT Development LLC, *Member*

STATE OF MICHIGAN )  
  ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ 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 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 \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

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