

618 SOUTH MAIN DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20__, 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 Urban Group Development Company, a Michigan corporation, with principal address at 225 South Ashley, Ann Arbor, MI 48104, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns or has a right to purchase certain land in the City of Ann Arbor, described below and site planned as Arbor Hills Crossing, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 618 South Main, and desires site plan and development agreement approval thereof, and

WHEREAS, on _____, 2012, City Council approved the 618 South Main Planned Project Site Plan ("Site Plan") and the 618 South Main Development Agreement ("Agreement") pursuant to a resolution adopted on that date, and

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

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

THE PROPRIETOR(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, 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 PROPRIETOR fails to construct the Improvements, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR, if the PROPRIETOR 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 PROPRIETOR'S engineer inspects.

(P-4) To install all public 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. The final course of asphalt paving shall be completed prior to the issuance of the final certificate of occupancy.

(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 PROPRIETOR, 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) 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 PROPRIETOR 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 PROPRIETOR one year after the date of acceptance by the CITY.

(P-8) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$58,900 to the CITY Parks and Recreation Services Unit, prior to the issuance of the certificate of occupancy, for improvements to nearby parks.

(P-9) To construct, repair and/or adequately maintain the on-site storm water management system. After construction of the private on-site storm water management system, to maintain it in perpetuity. 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 PROPRIETOR fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, 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 PROPRIETOR, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the PROPRIETOR 60 days after notice via first class mail, the CITY may bill the PROPRIETOR for the total cost, or assess the property as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, included by the PROPRIETOR in the master deed.

(P-10) 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-11) 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, PROPRIETOR 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-12) 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 PROPRIETOR proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, as determined by the Planning Manager or designee, that those changes be brought back to the City Council for approval. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-13) To maintain the landscaped areas in the right-of-way abutting the property along South Main Street, Mosley Street, and Ashley Street, consistent with the approved site plan.

(P-14) Prior to the issuance of building permits, to enter into and to record a permanent easement with the property owner of 611 South Ashley Street, with terms subject to approval of the City Attorney's Office, for the use of the dumpsters located at 611 South Ashley Street by PROPRIETOR and for access to the dumpsters by PROPRIETOR, CITY and their agents and contractors, as shown on the approved site plan.

(P-15) Prior to the issuance of building permits, to provide written permission from the property owner of 611 South Ashley Street, or a joint application for a Right-ofWay Permit with the property owner of 611 South Ashley Street, to allow for the construction of a curb cut to extend in front of their property within the public right-of-way.

(P-16) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that the building design achieves a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, the most recent version in effect at the date of this agreement, using an industry standard software energy modeling tool (EQUEST or equivalent). Further documentation or verification from an independent, qualified professional that the building achieves the two points shall be provided by the PROPRIETOR prior to any request for or issuance of a first certificate of occupancy.

(P-17) 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-18) Prior to application for and issuance of certificates of occupancy, to disconnect 42 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the Guidelines for Completion of Footing Drain Disconnections, Table A, and adopted by City Council, August 18, 2003 and

revised November 30, 2005 (the "Guidelines"). In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and PROPRIETOR agree to adjust the number of footing drains to be disconnected in accordance with the Guidelines. These disconnections are to be performed within the High Level Trunkline sewershed, upstream of where the development flows connect to this trunkline (intersection of Ashley Street and Madison Street; City MH ID 71-70680). The PROPRIETOR, however, may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis, at the discretion of the CITY Public Services Area.

(P-19) PROPRIETOR is the sole title holder in fee simple, or has a purchaser's interest of the land described below except for any mortgage, easements and deed restrictions of record and that the person signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this agreement for PROPRIETOR. PROPRIETOR shall acquire sole title in the land described below prior to the issuance of building permits or commencement of construction of the Site Plan. Further, PROPRIETOR shall submit a request to the City Assessor to combine the tax parcels into a single tax parcel prior to issuance of building permits.

(P-20) 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 PROPRIETOR complies with the approved Site Plan and/or the terms and conditions of the approved Agreement. The PROPRIETOR 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-21) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR 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-22) 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 618 South Main Planned Project 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 PROPRIETOR 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 Administrator is received. Such approval shall not be withheld unreasonably.

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

618 SOUTH MAIN – LEGAL DESCRIPTIONS

PARCEL I:

PARCEL II:

Commencing at an iron pipe at the intersection of the West line of Section 2, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan, with the South line of Washtenaw Avenue; thence South along the West line of said section, 277.50 feet for a Place of Beginning; thence deflecting 90° to the left 123.83 feet; thence deflecting 90° to the left 30.0 feet; thence deflecting 90° to the right 100.00 feet; thence deflecting 90° to the right 60.0 feet; thence deflecting 90° to the right 223.83 feet; thence deflecting 90° to the right 30.0 feet along the West line of said Section and the centerline of Platt Road to the Place of Beginning, being a part of the NW 1/4 of said Section 2.

Commencing at the W 1/4 post of Section 2, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan; thence North 1896.06 feet in the West line of the section; thence deflecting 107°17' to the right 134.41 feet for a Place of Beginning; thence continuing in the same direction, 100 feet; thence 72°43' to the right 177.86 feet; thence deflecting 90° to the right 100 feet; thence deflecting 91°14'40" to the right 207.62 feet to the Place of Beginning, being part of the NW 1/4 of Section 2.

Tax Item No. 09-12-02-204-037

PARCEL III:

Commencing at an iron pipe at the intersection of the West line of Section 2, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan, with the South line of Washtenaw Avenue; thence South along the said Westerly line of said Section

2, 577.5 feet; thence East at right angles 223.83 feet to an iron pipe; thence Northerly parallel to the West line of said Section 2, 330 feet; thence Westerly 100 feet; thence Northerly to the South line of Washtenaw Avenue; thence Northwesterly along the said South line of Washtenaw Avenue 134.41 feet to the Place of Beginning, excepting from the above description the South 270 feet thereof, being a part of the NW 1/4 of Section 2, Pittsfield Township, Washtenaw County, Michigan.

Also excepting therefrom the following described parcel of land: Commencing at an iron pipe at the Intersection of the West line of Section 2, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan, with the South line of Washtenaw Avenue; thence South along the West line of said Section, 277.50 feet for a Place of Beginning; thence deflecting 90° to the left 123.83 feet; thence deflecting 90° to the left 30.0 feet; thence deflecting 90° to the right 100 feet; thence deflecting 90° to the right 60.0 feet; thence deflecting 90° to the right 223.83 feet; thence deflecting 90° to the right 30.0 feet along the West line of said section and the centerline of Platt Road to the Place of Beginning, being a part of the NE 1/4 of said Section 2, T3S, R6E, City of Ann Arbor.
Tax Item No. 09-12-02-204-038

PARCEL IV:

Commencing at the W 1/4 corner of Section 2, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan; thence North 1896.06 feet along the West line of said Section and the centerline of Platt Road to a point on the Southerly right-of-way line of Washtenaw Avenue; thence S 72°43'00" E 234.41 feet along said right-of-way line to the Point of Beginning; thence continuing S 72°43'00" E 109.96 feet along said right-of-way line; thence South 475.20 feet; thence West 105.00 feet; thence North 507.87 feet to the Point of Beginning, being a part of the NW 1/4 of Section 2, T3S, R6E, City of Ann Arbor, Washtenaw County, Michigan.
Tax Item No. 09-12-02-204-024

(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 PROPRIETOR, 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 PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

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

Witnesses:

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

Witness:

Printed Name: _____

Urban Group Development Company
By: Daniel Ketelaar, president

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20____, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20____, before me personally appeared Thomas A. Stegeman member representative of RSW Washtenaw LLC to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as the free act and deed of said Limited Liability Company on behalf of RSW Washtenaw LLC by its authority.

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

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