

## **SOUTH POND VILLAGE DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, 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 Manchester Ann Arbor, LLC, a Michigan limited liability corporation, with principal address at 1700 West Big Beaver, Suite 120, Troy, Michigan 48084, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor (the "Property"), described in Paragraph T-4 below and site planned as South Pond Village, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as South Pond Village, and desires site plan approval 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 \_\_\_\_\_, 2015, the City Council approved the South Pond Village Site Plan ("Site Plan"), 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 DEVELOPER will install these improvements at the appropriate time.

### **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, 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 such reasonable time as may be 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 reasonable time set forth in the notice. Every owner of a portion of the Property, including 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 unit 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 water mains, sanitary sewer mains, and storm water main as shown on site plan and the final approved construction plan, subject to City Council approval. PROPRIETOR 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 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.

(P-5) To include proposed street and traffic control signs on the drawings and plans for proposed public streets, and to reimburse the City, within 45 days of receipt of an invoice, for the cost of fabricating and installing those signs. The Public Services Area shall have final approval and make final and future determinations for signage on the public streets, including parking. The CITY shall install all signs in the public rights-of-way after the appropriate Traffic Control Orders are approved. The DEVELOPER shall pay for the costs of the signs and installation of the signs installed in the public rights-of-way as well as any signs installed on the private drives.

(P-6) Prior to issuance of building permits for the condominium units, to install the condominium unit monuments and iron markers and assign condominium unit numbers in the master deed that conform to those on the approved site plan.

(P-7) To install all water mains, storm sewers, sanitary sewers, sidewalks and public streets, through the first course of asphalt, 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. Any changes to the proposed construction sequence shall be at the discretion of the Public Services Area.

(P-8) To maintain the public streets on the site-plan, including snow and ice removal, until the street improvements have been accepted for maintenance by the CITY.

(P-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Chalmers Drive such as street widening, street paving, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees when such improvements are determined by the CITY to be necessary. A provision shall be included in the master deed for the project stating that if the CITY undertakes to establish a special assessment district to improve Chalmers Drive, each condominium unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

(P-10) To submit a plan for approval by the CITY Public Services Area, prior to the request for and issuance of the Grading Permit for the maintenance of Chalmers Drive, including but not limited to the grading and graveling of Chalmers Drive. The DEVELOPER shall deposit \$10,000 with the CITY to be used by the Public Services Area in the event the DEVELOPER fails to repair and/or maintain Chalmers Drive consistent with the approved plan, as determined necessary by the Public Services Area. The DEVELOPER shall replenish the fund to its full amount within 15 days of notice from the City, if funds are required to be used for road maintenance. The remaining amount of the fund will be released to the DEVELOPER at the time that Chalmers Drive is paved by the CITY or at the time that the Final Certificate of Occupancy is issued for the development, whichever comes first.

(P-11) To convey to the CITY, prior to the issuance of any building permits and subject to acceptance by the Ann Arbor City Council, public streets as shown on the Site Plan.

(P-12) 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-13) 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-14) Existing woodland, landmark, 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 for each condominium unit. Existing woodland, landmark, 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 or final approval of each condominium unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-15) To convey to the CITY, subject to acceptance by the City Council, land of approximately one acre for a public park as shown on the Site Plan. The DEVELOPER shall record the deed and its conveyance to the CITY as public parkland. DEVELOPER shall submit legal descriptions and survey drawings for the public park prior to the request for and issuance of building permits, and the warranty deed shall be granted to the CITY in a form acceptable to the CITY Attorney. The public park conveyance shall be complete prior to the issuance of any certificate of occupancy for the project, or at another time as determined by the Community Services Administrator. A park identification sign shall be provided by the DEVELOPER per CITY specifications before issuance of any certificate of occupancy.

(P-16) 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-17) To create an association composed of all owners of South Pond Village condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for South Pond Village. The association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, open space, on-site storm water management system, and all other common elements, as well as landscaped islands in public streets.

(P-18) 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 such reasonable 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 reasonable time set forth in the notice.

(P-19) After construction of the private on-site storm water management system, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, 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 appropriate, 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 such reasonable 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 reasonable 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-20) After construction of the sidewalks along the rear lots of the south side of Woodcreek Condominium, to maintain the sidewalks, including snow and ice removal. DEVELOPER shall include this requirement as an obligation of the Association in the Master Deed.

(P-21) To install a non-motorized path connection to the Arborland development to the south. The connection shall be shown on the approved site plan and installed prior to issuance of any certificate of occupancy. DEVELOPER shall work with property owner of Arborland to obtain permission for said connection.

(P-22) 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 within 15 days of any such request. DEVELOPER shall include this requirement in the Master Deed.

(P-23) 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-24) 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-25) 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-26) No unit in South Pond Village may be divided such that an additional building unit is created.

(P-27) Prior to application for and issuance of certificates of occupancy, to disconnect 21 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"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council approved amendments or replacements to the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER 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-28) DEVELOPER is the sole title holder in fee simple, or has a purchaser's interest of the Property 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-29) Failure to construct, repair and/or maintain the site pursuant to the 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 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 Site Plan and/or Agreement.

(P-30) 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 Property 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-31) 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 South Pond Village 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 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 Southeast corner of Section 35, Town 2 South, Range 6 East, Ann Arbor Township, Washtenaw County, Michigan; thence North 89 degrees 38 minutes 00 seconds West 720.73 feet (recorded as 721.20 feet) along the South line of said Section 35 for a POINT OF BEGINNING;

thence continuing North 89 degrees 38 minutes 00 seconds West 602.75 feet along said South line;

thence North 01 degrees 05 minutes 30 seconds East 1913.82 feet along the West line of the East ½ of the Southeast ¼ of said Section 35 and the East line of Washtenaw Hills Estates No. 1, as recorded in liber 8, page 32 of plats, Washtenaw County Records, Washtenaw County, Michigan;  
thence North 88 degrees 06 minutes 21 seconds East 239.08 feet;  
thence North 27 degrees 21 minutes 40 seconds East 39.20 feet;  
thence South 62 degrees 38 minutes 20 seconds East 30.00 feet;  
thence South 27 degrees 21 minutes 40 seconds West 64.06 feet;  
thence South 15 degrees 15 minutes 23 seconds East 27.95 feet;  
thence South 63 degrees 16 minutes 59 seconds East 383.96 feet;  
thence South 11 degrees 30 minutes 24 seconds East 71.68 feet;  
thence South 23 degrees 21 minutes 23 seconds East 213.32 feet;  
thence North 83 degrees 01 minute 08 seconds East 120.06 feet;  
thence North 53 degrees 20 minutes 08 seconds East 32.49 feet;  
thence North 09 degrees 23 minutes 26 seconds East 52.58 feet;  
thence North 19 degrees 30 minutes 17 seconds East 20.12 feet;  
thence North 69 degrees 01 minute 39 seconds East 33.85 feet;  
thence South 76 degrees 14 minutes 19 seconds East 50.78 feet;  
thence South 56 degrees 22 minutes 47 seconds East 71.80 feet;  
thence South 64 degrees 23 minutes 55 seconds East 340.38 feet to the East line of said Section 35;  
thence South 01 degree 01 minute 29 seconds West 68.98 feet along said East line;  
thence along the Westerly right-of-way of US-23 as recorded in liber 959, page 339, Washtenaw County Records, Washtenaw County, Michigan, the following 2 courses:

- (1) South 47 degrees 15 minutes 15 seconds West 135.20 feet;
- (2) 1369.52 feet along the arc of a 2106.85 foot radius circular curve to the left, having a chord which bears South 28 degrees 37 minutes 57 seconds West 1345.53 feet to the PLACE OF BEGINNING, being part of the East ½ of the Southeast ¼ of said Section 35, Town 2 South, Range 6 East, Ann Arbor Township, Washtenaw County, Michigan, and containing 36.15 acres of land, more or less. Subject to easements and restrictions of record, if any.

Parcel ID No.: 09-09-35-400-047

(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.

(T-7) Wherever notice is herein provided to DEVELOPER, DEVELOPER may change the address for such notice by letter addressed to the CITY, c/o the Ann Arbor City Attorney.

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:

\_\_\_\_\_  
Steven D. Powers, City Administrator

Approved as to Form:

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

Manchester Ann Arbor, LLC, a Michigan limited liability company

By: \_\_\_\_\_  
Michael Furnari, Member

STATE OF MICHIGAN    )  
                                  ) ss:  
County of Washtenaw    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Christopher Taylor, Mayor and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_



