

611 EAST UNIVERSITY AVENUE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2016, 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 Collegiate Development Group, a Missouri limited liability company, with principal address at 7711 Bonhomme Avenue, Suite 625, St. Louis, Missouri 63105, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns or has a right to purchase certain land in the City of Ann Arbor, described below ("Property") and site planned as 611 East University Avenue, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 611 East University Avenue, and desires site plan and development agreement approval thereof, and

WHEREAS, on _____, 2016, City Council approved the 611 East University Avenue Site Plan ("Site Plan") and the 611 East University Avenue Development Agreement ("Agreement") pursuant to a resolution adopted on that date, 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 insure 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, 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 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. Every owner of a portion of the property, including co-owners of any 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) To install all water mains, public storm sewers and sanitary sewers pursuant to CITY approved plans and specifications, necessary to connect the Property with existing CITY systems adjacent to the Property prior to the issuance of any building permits, except the timing of such work may be revised to be completed at a later time at the discretion of the CITY Public Services Area.

(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 \$55,800 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to the Farmers Market.

(P-8) 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-9) To construct, repair and/or adequately maintain the private 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 Service Units. If the DEVELOPER fails to maintain any portion of the 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 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, if the DEVELOPER fails to complete the maintenance work within the time set forth in the notice. If, after such notice and cure period, the CITY completes the work, and the costs remain unpaid by the DEVELOPER 60 days after notice via first class mail, the CITY may bill the DEVELOPER for the total cost, or assess the property as provided in Chapter 13 of Ann Arbor City Code.

(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, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants of the development 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 DEVELOPER proposes any substantive changes to the approved building elevations, aesthetics, or materials, as determined by the Planning Manager or designee, then those changes shall be brought back to the City Council for approval. 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-13) To maintain the landscaped areas in the right-of-way abutting the Property along _____ and _____ consistent with the approved Site Plan.

(P-14) To grant a non-exclusive public access easement to the CITY for the area along the _____ of the Property from _____ to the _____ property line of the site as shown on the approved Site Plan to accommodate unimpeded, non-motorized access, subject to City Council approval. DEVELOPER shall submit a legal description and survey drawing for the easement prior to the request for and issuance of building permits and the easement shall be granted to the CITY in a form reasonably acceptable to the DEVELOPER and CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy.

(P-15) 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-16) Prior to application for and issuance of certificates of occupancy, to disconnect _____ 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 City of Ann Arbor Developer Offset Mitigation Program, as revised by City Council on June 15, 2015 (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 to or replacement of 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. These disconnections are to be performed within High Level Trunkline sewershed, upstream of where the development flows connect to this trunkline (intersection of _____ and _____; City MH ID _____), or such areas as may be allowed by the CITY Public Services Area. DEVELOPER, 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-17) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that a minimum of two points has been achieved under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmospheric Credit No. 1, V2009, 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 proved by the DEVELOPER prior to any request or issuance of a first certificate of occupancy.

(P-18) DEVELOPER is the sole title holder in fee simple, or has a purchaser's interest of the land described below and that the persons signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER. DEVELOPER shall acquire sole title in the Property prior to the issuance of building permits or commencement of construction of the Site Plan. Notwithstanding anything to the contrary contained herein, DEVELOPER's obligations hereunder are expressly conditioned on DEVELOPER obtaining fee simple title to the Property. Further, DEVELOPER shall submit a request to the City Assessor to combine the tax parcels comprising the Property into a single tax parcel prior to issuance of building permits.

(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) Prior to the issuance of a certificate of occupancy, the DEVELOPER and ZIPCar shall have finalized an agreement with the City of Ann Arbor Downtown Development Authority to place two car-share spaces within the Mosley Street right-of way as depicted on the approved Site Plan, or in the alternative, at the DEVELOPER's election, DEVELOPER shall provide for the tenants of the development two car-share spaces in the below grade parking lot.

(P-21) Prior to the issuance of any permit, to submit a complete survey and legal description for the Property to the satisfaction of the Public Services Area. The survey shall comply with the recording requirements of the Washtenaw County Register of Deeds and MI Public Act 132 for Certified Surveys.

(P-22) 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 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 and release of such lien.

(P-23) 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 611 East University Avenue Site Plan.

(C-2) To use the park contribution described above for improvements to nearby 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 unreasonably withheld, conditioned or delayed; provided, however, that DEVELOPER shall have the right to assign this Agreement without prior approval to an affiliate of DEVELOPER.

(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

611 E. University:

The Southerly 22.1 feet of the South 1/2 of Lots 62 and 63, except the Easterly 55 feet of Lot 63, Ransom S. Smith's Addition to the City of Ann Arbor, according to the plat thereof as recorded in Liber 42 of Deeds, Page 446, Washtenaw County Records.

615 E. University:

Parcel 1:

Lot 1, Block 1, Excepting and reserving therefrom the East 7 rods of said Lot 1, R.S. Smith's Second Addition to the City of Ann Arbor, according to the recorded plat thereof as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records.

Parcel 2:

The East 55 feet of the South 22 feet and 1 inch of the South half of Lot 63, Ransom S. Smith's Addition to the City of Ann Arbor, according to the recorded plat thereof as recorded in Liber 42 of Deeds, Page 446, Washtenaw County Records.

612 Church

The North 1/2 of the East 7 rods of Lot 1, in Block 1, of R. S. Smith's Second Addition to the City of Ann Arbor, according to the plat thereof, as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records. Reserving a right of way over the South 4 feet of the land herein described and granting a right of way over a strip 4 feet wide, along the South side and next adjoining land herein described. Also the South 5 feet of the East 111 feet of Lots 64 and 65, according to the Plat of Smith's Addition to the City of Ann Arbor, as recorded in Liber 42 of Deeds, Page 446, Washtenaw County Records.

Being subject to:

4.) Right of Way for common drive as recorded in Liber 145, Page 486, Washtenaw County Records.

5.) Easement for ingress and egress as disclosed by instrument recorded in Liber 1578, Page 657, Washtenaw County Records.

616 Church

The South 1/2 of the East 7 rods of Lot 1, Block 1, R. S. Smith's Second Addition to the City of Ann Arbor, as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records.

Subject to and together with a mutual easement and right of way as recorded in Liber 264, Page 234, and in Liber 509, Page 284, Washtenaw County Records.

Being more particularly described as:

PARCEL 2A:

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, Page 446, Washtenaw County Records, thence S 01°11'02" E 126.93 feet along the East line of said Lot 65 and along the West line of Church Street (66.00 feet wide) to the Point of Beginning; thence continuing S 01°11'02" E 70.96 feet along the East line of said Lot 65 and the East line of Lot 1 of "R.S. Smith's Second Addition to the City of Ann Arbor", as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records, and along the West line of said Church Street; thence S 88°40'01" W 248.60 feet along the South line of said Lot 1; thence N 01°09'47" W 88.10 feet along the West line of said Lot 1 and along the West line Lot 62 of said R.S. Smith's Addition to the City of Ann Arbor" and along the East line of East University Avenue (variable width); thence N 88°40'32" E 115.73 feet; thence S 01°10'20" E 22.10 feet along the West line of Lot 64 of said R.S. Smith's Addition to the City of Ann Arbor; thence N 88°40'32" E 21.00 feet along the South line of said Lot 64; thence N 01°10'41" W 5.00 feet; thence N 88°40'32" E 111.84 feet 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 #:

(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

Collegiate Development Group, a Missouri
limited liability company

By: _____
Brandt Stiles, Co-Founder:

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 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 _____, 2016 by Brandt Stiles, Co-Founder of Collegiate Development Group, a Missouri limited liability company, on behalf of the company.

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: Ben Carlisle
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265