

732 Packard (“5 Corners”) PUD DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this [--] day of [Month], [Year], 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 CS Acquisition Vehicle, LLC , a Limited Liability Corporation, with principal address at 1643 North Milwaukee Avenue, Chicago, Illinois, 60647, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 732 Packard “5 Corners”, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 732 Packard “5 Corners”, and desires PUD 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 main, private storm water management system, public street restoration, public sidewalk and amenity zone pavement, traffic signals and street lights (“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 private 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 an easement to the CITY for three-foot sidewalk easements across the Packard Street and South State Street frontages as shown on the Site Plan, 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 be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South State Street and/or Packard Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South State Street and/or Packard Street frontage when such Improvements are determined by the CITY to be necessary.

(P-6) 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-7) 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-8) For the benefit of the residents of the DEVELOPER'S development, to prepare and submit to the CITY for approval plans and specifications to improve Forsythe Park up to \$250,000.00 in material and labor value, including removing the existing kiosk, removing existing wood retaining walls and restoring the area, pavers and pavement work, drinking fountain replacement, furnishing repairs and replacement, lighting repairs and replacement, and basketball court surface, backboard, and net repairs and replacement provided that no work shall be commenced until the plans and specifications have been approved by the City Administrator or designee and until such other relevant information to the CITY service areas as shall be reasonably required has been provided.

(P-9) To construct the work set forth in Paragraph P-8 of this Agreement in accordance with the approved plans prior to the issuance of certificates of occupancy.

(P-10) 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-11) 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-12) Prior to the issuance of any grading or building permits for the Site Plan, for the benefit of the Property and in order to comply with Ann Arbor City Code requirements for site access and traffic impacts of the Project on nearby roads, to enter into an agreement with the CITY detailing specific public improvements ("Traffic Mitigation Improvements") to be made in order to mitigate access and traffic impacts of the development. The Traffic Mitigation Improvements as shown on the Site Plan, as further specified in civil construction plans, shall include rebuilding the traffic signal(s) controlling the intersection of South State Street at Hoover Street to accommodate the Project driveway. All Traffic Mitigation Improvements shall be constructed consistent with all applicable laws and standards, and shall include all work necessary to restore impacted intersections, streets, sidewalks, and other public infrastructure. The final design and civil construction drawings for Traffic Mitigation Improvements shall be completed by the DEVELOPER, and the Improvements shall be constructed by the DEVELOPER. All design, review and construction costs for the Traffic Mitigation Improvements shall be paid for by the DEVELOPER, and payment to the CITY shall be prior to the request for and issuance of any first certificate of occupancy for the Project, although Traffic Mitigation Improvements may be accepted at a later time as determined by the City Public Services Area.

(P-13) 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-14) 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-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) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve Silver level certification from the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED), Version 4.1. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent). Proof of registration is required at the time of building permit issuance and documentation of LEED Silver certification shall be provided prior to receiving any certificate of occupancy.

(P-17) To provide partial solar power for the Project by installing solar panels to produce a minimum rated capacity of 125,000 kWh per year, in operation prior to the request for or issuance of any certificate of occupancy.

(P-18) Prior to the issuance of the first certificate of occupancy, to pay to the CITY an affordable housing contribution of \$6,620,604.00 to be deposited in the City of Ann Arbor Affordable Housing Fund in compliance with Ann Arbor City Code and the approved Supplemental Regulations for the Property, unless prior to the issuance of such certificate of occupancy the CITY and DEVELOPER have agreed on a plan for DEVELOPER constructing at least 16% of the residential floor area as Affordable Housing for Low Income Households as defined in Ann Arbor City consistent with the approved Supplemental Regulations for the Property.

(P-19) 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-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 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-21) 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-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 732 Packard “5 Corners” 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 DEVELOPER provides the CITY with prior notice. Notwithstanding the foregoing, DEVELOPER is permitted to collaterally assign this Agreement to its mortgage lender without prior notice to the CITY, and any transfers of this Agreement in connection with such mortgage lender’s rights shall not be prohibited hereunder.

(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:

BEGINNING at the Southeasterly Corner of Lot 4, Block 4 of “MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR”, as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records; thence S51°18’08”W 198.00 feet along the Southeasterly line of said Lot 4; thence N39°03’51”W 36.80 feet along the Southwesterly line of said Lot 4, thence N12°15’03”W 56.33 feet; thence S88°43’13”W 70.89 feet; thence N01°23’37”W 269.88 feet along the West line of said “MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR” and its’ extension thereof, also being the East line of South State Street (66 feet wide); thence S89°13’35”E 36.07 feet; thence N50°56’09”E 35.98 feet; thence S39°03’51”E 322.28 feet along the Northeasterly line of said “MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR”, also being the Southwesterly line of Packard Street (66 feet wide) to the POINT OF BEGINNING. Being part of Lots 1, 3, & 4 and all of Lot 2, Block 4 of “MAP OF HILLS ADDITION TO THE CITY OF ANN ARBOR”, as recorded in Liber 60 of Deeds, Pages 134 and 135, Washtenaw County Records. Being part of the NW 1/4 of Section 33, T2S, R6E, City of Ann Arbor,

Washtenaw County, Michigan and containing 1.27 acres of land, more or less.

City of Ann Arbor, Washtenaw County, Michigan

(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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

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:

Milton Dohoney Jr., City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

