

## **SOUTH TOWN DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 South Town by 4M LLC ("Developer"), a Michigan limited liability company, with principal address at 2082 S State St, Ann Arbor, Michigan 48104, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns or has the right to develop certain land in the City of Ann Arbor, described in Paragraph T-4 below (the "Property") and site planned as South Town (the "Project"), 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 Town, 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, on September 5, 2023, City Council approved the South Town Site Plan ("Site Plan") and the South Town Development Agreement ("Agreement") pursuant to a resolution adopted on that date, 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 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 main, private storm water management system, and public sidewalk ("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.

(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 public sidewalk and access 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 certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) Prior to the issuance of any certificate of occupancy, to dedicate a triangle of land at the northeast corner of Stimson Street and South State Street as shown on the Site Plan to the City of Ann Arbor as publicly owned right-of-way.

(P-6) To install all water mains 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.

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to South State, Stimson, Henry and/or White streets, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along these frontages 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 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 improvements in the Project prior to final written acceptance of the public Improvements 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 Improvements and until notice of acceptance by the CITY of the Improvements.

(P-10) For the benefit of the residents of the DEVELOPER'S Project, to make a park contribution based on the formula of the Number of Dwelling Units x \$625.00 to the CITY Parks and Recreation Services Unit prior to the issuance of certificate of occupancy. (For 216 dwelling units, the contribution to be provided is \$135,000.00.) This contribution will be used for Improvements to neighborhood parks such as Graydon Park, Frisinger Park, or regional parks such as Gallup Park, Burns Park or Buhr Park.

(P-11) 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-12) 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 upon request.

(P-13) Prior to the request for or issuance of any certificate of occupancy, for the benefit of the Property and in order to comply with Ann Arbor City Code requirements for site access and transportation impacts of the Project on nearby roads, Traffic Mitigation Improvements shall be paid for and completed by the DEVELOPER. The Transportation Mitigation Improvements as shown on the Site Plan and recommended in the DEVELOPER'S Multimodal Transportation Impact Analysis, as further specified in civil construction plans to be approved by the CITY, shall include:

- a) Installing an uncontrolled crosswalk across Stimson Street at White Street with associated ramps, pavement markings, and rectangular rapid flashing beacon (RRFB).
- b) Conversion of Henry Street traffic from one-way to two-way with vertical deflection traffic calming measures (such as speed humps, lumps, or tables) between White Street and South State Street.

These Transportation Mitigation Improvements shall be designed and constructed by the DEVELOPER consistent with all applicable laws and standards including the resources on traffic calming measures provided by the ITE (Institute of Transportation Engineers) on its traffic calming website. The DEVELOPER shall be responsible for any applicable review and inspection fees charged by the City to ensure the Transportation Mitigation Improvements are designed and constructed accordingly.

(P-14) To design, construct, repair and maintain this Project in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said Project will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said Project 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-15) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the Project 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 a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. 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).

(P-17) DEVELOPER is the sole title holder in fee simple of the Property described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-18) 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-19) 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 Project 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-20) 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 Town Site Plan.

(C-2) To use the park contribution described above for Improvements to neighborhood parks such as Graydon or Frisinger, or regional parks such as Gallup, Burns or Buhr.

(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 Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

Lots 1, 2, 3, and 4, Stimson Subdivision, as recorded in Liber 5, Page 30, Washtenaw County Records, and Lots 9, 10, 19, 20 and part of Lots 8 and 18, and the vacated alley adjacent to said Lots 9, 10, 19, and 20, and the vacated alley adjacent to said parts of Lots 8 and 18, Block 3, Hamilton, Rose and Sheehan's Addition, as recorded in Liber 1, Page 24, being part of the Southwest 1/4 of Section 33, Town 2 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, described as: Commencing at the Southwest corner of said Lot 1 and the Point of Beginning; thence N01°17'27"W 273.32 feet along the East right-of-way line of South State Street; thence N87°04'31"E 263.92 feet along the South right-of-way line of Henry Street; thence S01°21'25"E 273.31 feet along the West right-of-way line of White Street; thence S87°04'31"W 264.23 feet along the North line of Stimson Street to the Point of Beginning. Contains 1.66 acres.

Tax Parcel Id. No.: 09-09-33-315-001, 09-09-33-315-002, 09-09-33-315-003, 09-09-33-315-004, 09-09-33-315-005, 09-09-33-315-006, 09-09-33-315-007, 09-09-33-315-008, 09-09-33-315-009, 09-09-33-315-010

(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 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

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ 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 \_\_\_\_\_, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

