

## 1208 SOUTH UNIVERSITY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, 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 LMP Galleria Property Owner, a Delaware limited liability company, with principal address at 3410 Belle Chase Way, Suite 600, Lansing, MI 48911, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described in Paragraph T-4 below (the "Property") and site planned as 1208 South University (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 1208 South University, 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 August 20, 2024, Planning Commission approved the 1208 South University Site Plan ("Site Plan") and on \_\_\_\_\_, 2024 City Council approved the 1208 South University Development Agreement ("Agreement"), 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 private storm water management system, sidewalk, 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 (if any), 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 access easement to the CITY for the collection of solid waste on the Property as shown on the Site Plan (and civil construction drawings), subject to City Council approval. The easement shall prohibit any construction within the easement area that would prevent or impair solid waste access to the Property as shown on the Site Plan (and civil construction drawings). 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 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, although the easement 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 University Avenue, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South University Avenue 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 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 Project 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 Project, to make a park contribution of \$124,375 to the CITY Parks and Recreation Services Unit prior to the request for or issuance of certificates of occupancy for Improvements to Douglas Park, Crary Park, Forsythe Park, Hanover Square Park, or Liberty Plaza, as well as Community-wide Parks like Burns Park, Gallup Park, West Park, Argo Nature Area, and Riverside Park.

(P-9) 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-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 upon request.

(P-11) 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-12) To include the elevation drawings, as submitted to City Council, as part of the 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-13) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the development Improvements, and within one month after completion or abandonment of construction.

(P-14) 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 signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-15) 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-16) 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-17) 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.

(P-18) The Developer hereby agrees to maintain safe non-motorized transportation routes on South University Avenue to the greatest extent practicable during construction.

#### **THE CITY HEREBY AGREES:**

(C-1) In consideration of the above undertakings, to approve the 1208 South University Site Plan.

(C-2) To grant a non-exclusive easement to the Developer for ingress and egress from the parking area in the Project over the CITY-owned property at 616 south Forest to the public right-of-way, 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 DEVELOPER with terms acceptable to the CITY Attorney and CITY Administrator. The easement must be approved by City Council prior to the request for and issuance of any temporary or final certificate of occupancy.

(C-3) To use the park contribution described above for Improvements to the Douglas Park, Cray Park, Forsythe Park, Hanover Square Park, or Liberty Plaza, as well as Community-wide Parks like Burns Park, Gallup Park, West Park, Argo Nature Area, and Riverside Park.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) 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

Parcel 1:

The North 120 feet of the West ½ of Lot 69 and the North 120 feet of the East 16 feet of Lot 68, R.S. Smith's Addition to the City of Ann Arbor, as recorded in Liber 42 of Deeds, Pages 446 and 447, Washtenaw County Records, also 50 feet in width off from the West side of Lot 68, except 33 feet x 32 feet in the Southwest corner thereof. Also the South 12 feet of the East 16 feet of Lot 68 and the South 12 feet of the West ½ of Lot 69, according to the recorded plat of R.S. Smith's Addition to the City of Ann Arbor. Also the east 1/2 of fractional Lot 3 and the West 1/2 of Fractional Lot 4 in Block 1 of R. Smith's Second Addition to the City of Ann Arbor, as recorded in Liber 48 of Deeds, Page 40, Washtenaw County Records, together with a right of way as described in the Warranty Deed recorded in Liber 232 of Deeds, Page 351, and instrument recorded in Liber 650 of Deeds, Page 326, as amended in instrument recorded in Liber 1155 of Deeds, Page 212, Washtenaw County Records.

Parcel 2:

The East 33 feet of Lot 69, the West 2 feet of the South 22 feet of Lot 70, and the North 110 feet of the West ½ of Lot 70, Smith's Addition to the City of Ann Arbor, as recorded in Liber 42 of Deeds, Pages 446 and 447, Washtenaw County Records, and the North 22 feet of the East 33 feet of Fractional Lot 4 and the West 2 feet of the North 22 feet of Fractional Lot 5, 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, together with those certain easement right created by Instrument recorded in Liber 1155 of Deeds, Page 212, Washtenaw County Records.

Parcel ID: 09-09-28-310-025

(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.

[Signatures on following pages]

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 \_\_\_\_\_

LMP GALLERIA PROPERTY OWNER, LLC

By: \_\_\_\_\_  
W Christopher Hart,  
Authorized Signatory

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by W Christopher Hart, Authorized Signatory of LMP Galleria Property Owner, LLC, a Delaware 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:  
Kevin S. McDonald (P-61761)  
Chief Deputy City Attorney  
City of Ann Arbor  
Office of the City Attorney  
P.O. Box 8647  
Ann Arbor, MI 48107-8647