

711 CHURCH STREET 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 LV Church Street GP, LLC, a Delaware limited liability company, with principal address at 704 West 9th Street, Austin, Texas 78701, 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 711 Church Street (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 711 Church Street Planned Unit Development, 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 _____, 2024, City Council approved the 711 Church Street PUD Site Plan ("Site Plan") and the 711 Church Street 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, public sidewalk restoration, public streetscape amenity zone and walking zone, 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.

(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 sidewalk easement to extend one foot from the back of the eight-foot sidewalk zone across the northern and western frontages of the site as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings 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 install all water mains and sanitary sewers, 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 vertical building permits (other than foundation permits). All Stormwater system components shall be installed pursuant to approved plans and specifications prior to the issuance of any building permits, or at a later time as determined by the City Public Services Area.

(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 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 improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-8) DEVELOPER shall make all efforts to preserve the existing Chinkapin Oak landmark tree shown on the Site Plan and maintain such tree in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of certificate of occupancy, provided, however, DEVELOPER shall include the tree in its calculations for mitigation in the event it is impacted during construction of the Project. If 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, DEVELOPER shall remove the tree.

(P-9) For the benefit of the residents of the DEVELOPER'S Project, to make a park contribution consistent with the formula for contributions in lieu of land provided in the 2023 Parks, Recreation and Open Space Plan of \$620.00 per dwelling unit to the CITY Parks and Recreation Services Unit prior to the request for or issuance of any certificate of occupancy for Improvements to neighborhood parks within walking distance of the site, urban parks/plazas, or community-wide parks and recreation facilities.

(P-10) For the benefit of the residents of the DEVELOPER'S Project and fulfilling a beneficial effect of the 711 Church Street PUD Zoning District, to make a contribution of \$250,000.00 to the City of Ann Arbor prior to the request for and issuance of the first certificate of occupancy, for the purchase and maintenance of public restrooms in the downtown and central area of the CITY.

(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.

(P-13) 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-14) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the Project has been designed to achieve a minimum of LEED Gold (v4.0 or newer) under the U. S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards. 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). Prior to issuance of any certificate of occupancy the DEVELOPER shall either have the building certified by the USGBC, the Project architect, or provide some other evidence acceptable to the CITY demonstrating that the structure meets or exceeds the LEED Gold standard.

(P-15) Within two years of issuance of the final certificate of occupancy for the Project, to provide documentation of USGBC LEED Gold certification. Failure to demonstrate full compliance with the Applicant's commitment to achieve the requested LEED Certification premium shall be a violation of this Agreement. The penalty for each violation is an amount determined by the following formula: $P = [(LC-CE) / LC] \times CV \times .075$.

Where:

- P is the penalty;
- LC is the minimum number of credits to earn the requested LEED Certification;
- CE is the number of credits earned as documented by the U.S. Green Building Council report;
- CV is the construction value, as set forth on the building permit for the new Structure;

No additional penalty will be imposed by the CITY for failure to comply to the commitment after the penalty is paid in full and the Project will be deemed conforming to the 711 Church PUD Supplemental Regulations and this Agreement. In the event that the penalty payment is not made within 45 days of notice by the City of Ann Arbor, the City may initiate revocation of any and all certificates of occupancy for non-compliance with City codes and regulations, or seek any other remedy available in this Agreement or allowed by law.

(P-16) To provide partial solar power for the Project by installing solar panels on the roof of the Project, as shown on the Site Plan, and subsequent construction drawings. The solar panels shall produce a minimum capacity for 125,000 kWh per year, and shall be operational prior to the request for or issuance of any certificate of occupancy.

(P-17) To pay to the CITY an affordable housing contribution in lieu of providing 17% of the total Project units as Affordable Housing for Lower Income Households as defined in Ann Arbor City Code consistent with the approved Supplemental Regulations for the Property. A contribution of \$126.00 per square foot for 46.4 dwelling units at an average size of 1,240 square feet, for a total contribution of \$7,251,098.40 shall be deposited in the City of Ann Arbor Affordable Housing Fund prior to the issuance of the first certificate of occupancy unless prior to the issuance of such certificate of occupancy the CITY and DEVELOPER have agreed on a plan for DEVELOPER to construct some or all of the units as part of the Project.

(P-18) To provide and maintain a public art installation following the procedures set forth in the 711 Church PUD Supplemental Regulations.

(P-19) 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. Non-substantive changes may be approved by the Planning Manager or designee.

(P-20) 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-21) 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-22) Failure to construct, repair and/or maintain the site pursuant to the Site Plan and/or failure to comply with any of this 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 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-23) 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-24) 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 711 Church Street Site Plan.

(C-2) To use the park contribution as described above for Improvements to the neighborhood parks within walking distance of the site, urban parks/plazas, or community-wide parks and recreation facilities.

(C-3) To use the contribution for public restrooms as described above for the purchase and maintenance of public restrooms in the downtown and central area of the CITY.

(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

BEGINNING at the NW Corner of Lot 5, Block III of "R.S. Smith's Second Addition to the City of Ann Arbor", as recorded in Liber 48 of Deeds, Pages 40, Washtenaw County Records;

thence N88°49'47"E 132.61 feet along the North line of Lot 4 and Lot 5, Block III of said "R.S. Smith's Second Addition" and the South line Willard Street (49.5 feet wide);

thence S01°04'57"E 216.00 feet along the East line of Lot 4, Block III of said "R.S. Smith's Second Addition";

thence N88°49'47"E 33.00 feet along the North line of the East 33.00 feet of the South 48.00 feet of Lot 4, Block IV of said "R.S. Smith's Second Addition";

thence S01°04'57"E 108.00 feet along the East line of the East 33.00 feet of Lots 4 and 5, Block IV of said "R.S. Smith's Second Addition";

thence S88°49'47"W 164.21 feet along the South line of the North 54.00 feet of Lot 5, Block IV and the South line of the North 54.00 feet of Lot 2 and Lot 3, Block III, "R.S. Smith's Second Addition";

thence N01°19'51"W 324.00 feet along the West line of Lot 2 and Lot 5, Block III, of said "R.S. Smith's Second Addition" and the East line of Church Street (66 feet wide) to the POINT OF BEGINNING.

Being a part of the SW 1/4 of Section 28, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan and containing 1.06 acres of land, more or less.

Parcel Id No.: 09-09-28-308-001, 09-09-28-308-002, 09-09-28-308-003, 09-09-28-308-005, 09-09-28-308-006, and 09-09-28-308-020

(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 the following page]

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 _____

